

**HB**

**213**

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

May 10, 1999

**SUBJECT:** Medical Marijuana - CSSSSB 94(HES)

**TO:** Senator Loren Leman  
Attn: Mike Pauley

**FROM:** Gerald P. Luckhaupt *GL*  
Legislative Counsel

You have asked a number of questions concerning controlled substances, medical use of marijuana, 1997 Ballot Measure No. 8, and CSSSSB 94(HES).

**Question 1:** "Existing law at AS 28.35.030 states that a person commits the crime of 'driving while intoxicated' if the person operates or drives a motor vehicle, aircraft, or watercraft 'while under the influence of intoxicating liquor, *or any controlled substance.*' Since the new Medical Marijuana Act approved by voters last fall removes 'marijuana possessed for medical purposes' from the list of controlled substances at AS 11.71, is it accurate to conclude that an individual who operates a vehicle while under the influence of marijuana used for medical purposes cannot, on this basis, be charged with a violation under Sec. 28.35.030?"

**Answer:** Not exactly. AS 28.35.039 provides that a controlled substance for purposes of driving under the influence is any substance listed as being controlled under state law or federal law.<sup>2</sup> Therefore the initiative's removal of medical marijuana from being a controlled substance under state law would not be fatal to a prosecution for drunk driving. But, AS 17.37.030(a), enacted by the initiative, provides that a patient may not "be found guilty of, or penalized in any manner for, a violation of law related to the medical use of marijuana." A violation of AS 28.35.030 by a patient using medical marijuana could easily be considered by a court to be related to the medical use of marijuana and conviction of AS 28.35.030 could be easily found to be precluded under the broad-reaching immunity provided by AS 17.37.030.

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<sup>1</sup>Emphasis (italics and underlining) in this question and the other questions, infra, are from the original.

<sup>2</sup>AS 28.35.039 refers to the definition of controlled substance in AS 28.33.190. That section defines "controlled substance" as "any substance listed as being controlled under AS 11.71 or 21 U.S.C. 812 - 813, or determined under federal regulations to be controlled for purposes of 21 U.S.C. 801 - 813 (Controlled Substances Act)."

**Question 2:** "Existing law at AS 11.61.210 states that a person commits 'misconduct involving weapons in the fourth degree' if the person has a firearm on his person and is also in an impaired mental or physical condition because the person is under the influence of 'an intoxicating liquor or a *controlled substance*.' Since the new Medical Marijuana Act removes 'marijuana possessed for medical purposes' from the list of controlled substances at AS 11.71, is it accurate to conclude that an individual who possesses a weapon while in an impaired mental or physical state because of the use of medical marijuana cannot, on this basis, be charged with a violation under Sec. 11.61.210?"

**Answer:** I believe a court could conclude that marijuana possessed for medical purposes is not a controlled substance and therefore the marijuana possessed in the person's body so that a person would be under the influence of the marijuana is not a controlled substance if it was ingested for a medical purpose, thereby precluding a prosecution under AS 11.61.210.<sup>3/</sup> Further, AS 17.37.030(a), enacted by the initiative, provides that a patient may not "be found guilty of, or penalized in any manner for, a violation of law related to the medical use of marijuana." A violation of AS 11.61.210 by a patient using medical marijuana could easily be considered by a court to be related to the medical use of marijuana and conviction of AS 11.61.210 could be easily found to be precluded under the broad-reaching immunity provided by AS 17.37.030.

**Question 3:** "Existing law at AS 11.61.200 states that a person commits the crime of 'misconduct involving weapons in the third degree' if the person knowingly sells or transfers a firearm to another person who is physically or mentally impaired because he is under the influence of 'intoxicating liquor, or *controlled substance*.' Since the new Medical Marijuana Act removes 'marijuana possessed for medical purposes' from the list of controlled substances at AS 11.71, is it accurate to conclude that an individual who knowingly sells or transfers a firearm to a person impaired as a result of using marijuana for medical purposes cannot, on this basis, be charged with a violation under Sec. 11.61.200?"

**Answer:** I believe a court could conclude that marijuana possessed for medical purposes is not a controlled substance and therefore the marijuana possessed in the person's body so that a person would be under the influence of the marijuana is not a controlled substance if it was ingested for a medical purpose, thereby precluding a prosecution under AS 11.61.200.<sup>4/</sup>

**Question 4:** "Existing law at AS 09.65.205 states that a person who sells or barter a controlled substance in violation of the controlled substance law at AS 11.71 is 'strictly liable' for damages caused by the recipient of the controlled substance, if the damages caused by the recipient were related to the influence of the controlled substance. Since 'marijuana possessed for medical purposes' is no longer a controlled substance under AS 11.71, is it accurate to conclude that a person cannot be held liable under AS 09.65.205 for selling

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<sup>3/</sup>A controlled substance for purposes of this section only refers to a controlled substance as defined under state law.

<sup>4/</sup>A controlled substance for purposes of this section only refers to a controlled substance as defined under state law.

marijuana to a person for medical use, when the recipient later causes damages as a result of the influence of the drug?"

**Answer:** I believe a court could conclude that marijuana possessed for medical purposes is not a controlled substance and therefore the marijuana possessed in the person's body so that a person would be under the influence of the marijuana is not a controlled substance if it was ingested for a medical purpose, thereby precluding the applicability of AS 09.65.205. Further, under the initiative, the sale or barter of the medical marijuana by a person in possession of a registry identification card to another person in possession of a registry identification card or eligible for such card is not unlawful thereby the liability imposed under AS 09.65.205 would not be applicable.

**Question 5:** "AS 11.71.350 states as follows: 'It is not necessary for the state to negate an exemption or exception provided for in this chapter in a complaint, information, indictment, or other pleadings or at a trial, hearing, or other proceeding under this chapter or AS 17.30. The defendant has the burden of proving by a preponderance of the evidence any exemption or exception claimed by the defendant.' Is this language consistent with the 'affirmative defense' approach in Section 1 of CS for SSSB 94? Is it accurate to state that the burden of proof in SSSB 94 is no different than what is required in existing law for any other defendant who is charged with misusing a prescription drug (e.g., morphine, etc.)?"

**Answer:** Yes. For example, this section basically means that the state as part of its case does not have to disprove that a person did not have a prescription for a controlled substance that a person possessed - the person has the burden to prove that their possession was lawful as they were the lawful ultimate user of the controlled substance by a prescription. The affirmative defense is consistent with this approach.

**Question 6:** What was the Marijuana Therapeutic Research Program?

**Answer:** The Marijuana Therapeutic Research Program (AS 17.35) was established by the legislature in 1982. When creating the program the legislature made these findings: **Sec. 17.35.010. Legislative purpose.** The legislature finds that recent research has shown that the use of marijuana may alleviate the nausea and ill effects of cancer chemotherapy and radiology, and, additionally, may alleviate the ill effects of glaucoma. The legislature further finds that there is a need for further research and experimentation regarding the use of marijuana under strictly controlled circumstances.

The program authorized certain persons selected by a panel of physicians to possess marijuana for the patient's own use. The Board of Pharmacy administered the program and was required to report to the legislature and the governor on the effectiveness of the program by March 1, 1984. The legislature repealed the program in 1986. A copy of AS 17.35 is attached.

**Question 7:** What is a "sworn statement"? Does this require a notary public or just a witness?

**Answer:** AS 11.56.240 defines "statement"<sup>5/</sup> and "sworn statement"<sup>6/</sup> for purposes of the perjury and unsworn falsification laws. "Sworn statement" means a statement given under oath or affirmation attesting to the truth of what is stated and includes a notarized statement. See e.g., *Gargan v. State*, 805 P.2d 998 (Alaska App. 1991). AS 11.56.240(2)(A). Under AS 09.63.010,

[t]he following persons may take an oath, affirmation, or acknowledgment:

- (1) a justice, judge, or magistrate of a court of the State of Alaska or of the United States;
- (2) a clerk or deputy clerk of a court of the State of Alaska or of the United States;
- (3) a notary public;
- (4) a United States postmaster;
- (5) a commissioned officer under AS 09.63.050(4); or
- (6) a municipal clerk carrying out the clerk's duties under AS 29.20.380.

"Sworn statement" also includes a statement given under penalty of perjury under AS 09.63.020. AS 11.56.240(2)(B). AS 09.63.020(a) provides that something that is required

to be supported, evidenced, established, or proven by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making it (other than a deposition, an acknowledgment, an oath of office, or an oath required to be taken before a specified official other than a notary public) may be supported, evidenced, established, or proven by the person certifying in writing "under penalty of perjury" that the matter is true. The certification shall state the date and place of execution, the fact that a notary public or other official empowered to administer oaths is unavailable, and the following: "I certify under penalty of perjury that the foregoing is true."

See e.g., *Harrison v. State*, 923 P.2d 107 (Alaska App. 1996).

GPL:pl  
99-074.plm

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<sup>5/</sup>"Statement" means "a representation of fact and includes a representation of opinion, belief, or other state of mind when the representation clearly relates to state of mind apart from or in addition to any facts that are the subject of the representation." AS 11.56.240(1).

<sup>6/</sup>"Sworn statement" means  
"(A) a statement knowingly given under oath or affirmation attesting to the truth of what is stated, including a notarized statement; or  
(B) a statement knowingly given under penalty of perjury under AS 09.63.020." AS 11.56.240(2).

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### Chapter 35. Marijuana Therapeutic Research Program.

Section	Section
10. Legislative purpose	40. Sources, distribution and possession of marijuana
20. Marijuana therapeutic research program	50. Report to the governor and legislature
30. Patient qualification review committee	500. Definitions

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**Cross references.** — For declaration for legislative purpose, see § 1, ch. 45, SLA 1982 in the 1982 Temporary and Special Acts and Resolves.

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**Sec. 17.35.010. Legislative purpose.** The legislature finds that recent research has shown that the use of marijuana may alleviate the nausea and ill effects of cancer chemotherapy and radiology, and, additionally, may alleviate the ill effects of glaucoma. The legislature further finds that there is a need for further research and experimentation regarding the use of marijuana under strictly controlled circumstances. (§ 5 ch 45 SLA 1982)

**Sec. 17.35.020. Marijuana therapeutic research program.** (a) A therapeutic research program is established in the Board of Pharmacy. The program shall be administered by the board. The board shall adopt regulations necessary for the proper administration of this chapter. Before adopting regulations, the board shall consider pertinent regulations adopted by the Drug Enforcement Administration of the United States Department of Justice, the federal Food and Drug Administration, and the National Institute on Drug Abuse.

(b) Except as provided in AS 17.35.030(e), the therapeutic research program is limited to cancer chemotherapy and radiology patients and glaucoma patients, who are certified to the Patient Qualification Review Committee by a practitioner. A patient may not be admitted to the therapeutic research program without full disclosure by the practitioner of the experimental nature of this program and of the possible risks and side effects of the proposed treatment.

(c) The board shall provide by regulation for a program of registration of therapeutic research projects. (§ 5 ch 45 SLA 1982)

**Sec. 17.35.030. Patient qualification review committee.** (a) The board shall appoint a Patient Qualification Review Committee to serve at its pleasure. The committee shall consist of four members with the following qualifications:

- (1) two physicians licensed to practice medicine in the state, one of whom specializes in the practice of ophthalmology;

(2) a physician licensed to practice medicine in the state who specializes in the practice of psychiatry; and

(3) a physician licensed to practice medicine in the state who specializes in the practice of radiology.

(b) Members of the Patient Qualification Review Committee receive no salary but are entitled to per diem for travel and expenses authorized by law for boards and commissions.

(c) The Patient Qualification Review Committee shall review all applicants for the therapeutic research program and their licensed practitioners and certify their participation in the program.

(d) The Patient Qualification Review Committee and the board shall protect the privacy of individuals who participate in the therapeutic research program by withholding the names and other identifying characteristics of those individuals from all persons who are not connected with the research. Persons authorized to engage in research under the therapeutic research program may not be compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was granted unless necessary to permit the board to determine whether the research is being conducted in accordance with the authorization.

(e) The Patient Qualification Review Committee may include other disease groups for participation in the therapeutic research program. However, a practitioner must present pertinent medical data to both the committee and the board before a disease group may be added. The participation of a disease group must be approved by the board consistent with applicable regulations adopted by the Drug Enforcement Administration of the United States Department of Justice, the federal Food and Drug Administration, and the National Institute on Drug Abuse. (§ 5 ch 45 SLA 1982)

**Sec. 17.35.040. Sources, distribution and possession of marijuana.** (a) A patient who is certified to participate in the therapeutic research program by the Patient Qualification Review Committee may obtain and possess marijuana, its derivatives, or its active ingredients, whether synthetic or natural, for the patient's own use.

(b) The board shall establish procedures by which a person authorized under this section to possess marijuana, its derivatives or active ingredients, whether synthetic or natural, may do so, subject to applicable regulations adopted by the Drug Enforcement Administration of the United States Department of Justice, the United States Food and Drug Administration, and the National Institute on Drug Abuse. (§ 5 ch 45 SLA 1982)

**Sec. 17.35.050. Report to the governor and legislature.** The board, in conjunction with the Patient Qualification Review Committee, shall report its findings and recommendations to the governor and the legislature regarding the effectiveness of the therapeutic research program by March 1, 1984. (§ 5 ch 45 SLA 1982)

17.35.050

§ 17.35.500

FOOD AND DRUGS

§ 17.35.500

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**Sec. 17.35.500. Definitions.** In this chapter  
(1) "board" means the Board of Pharmacy;  
(2) "marijuana" has the meaning set out in AS 11.71.900(14);  
(3) "practitioner" means a physician authorized to practice medicine  
in the state under AS 08.64. (§ 5 ch 45 SLA 1982)

Revisor's notes. — Enacted as AS  
17.35.060. Renumbered in 1982.

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. CS HB 213 (HES)

Revision Date: \_\_\_\_\_ Der.t. Affected: Health and Social Services  
 Title: An Act relating to the medical use of marijuana; and BRU: State Health Services  
 Component: Bureau of Vital Statistics  
 Sponsor: HOUSE (HES) COMPONENT SERIAL NO. 961  
 Requestor: HOUSE (HES) See also (SN#): \_\_\_\_\_

**Expenditures/Revenues:** (Thousands of Dollars)

OPERATING	FY00	FY01	FY02	FY03	FY04	FY05
PERSONAL SERVICES	37.7	38.0	39.0	40.0	41.0	42.0
TRAVEL						
CONTRACTUAL	10.0	10.9	11.8	7.3	8.1	8.9
SUPPLIES	3.0	1.5	3.0	1.5	3.0	1.5
EQUIPMENT	7.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>57.7</b>	<b>50.4</b>	<b>53.8</b>	<b>48.8</b>	<b>52.1</b>	<b>52.4</b>

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	52.7	45.4	48.8	43.8	47.1	47.4
1005 GF/Program Receipts	5.0	5.0	5.0	5.0	5.0	5.0
1037 GF/Mental Health						
Other (please specify)						
<b>TOTAL</b>	<b>57.7</b>	<b>50.4</b>	<b>53.8</b>	<b>48.8</b>	<b>52.1</b>	<b>52.4</b>

**POSITIONS:**

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

Estimate of any current year (FY99) cost: \_\_\_\_\_

**ANALYSIS:** (Attach a separate page if necessary)

The Department estimates that changing the registry from voluntary to mandatory will double the workload. The department will also have to redraft the regulations covering medical marijuana and reprocess them through public hearings. These will require the following:

- Line 100 One Administrative Clerk III for data entry and review of records
- Line 300 Redraft existing regulations to conform to amendments and petition process and operating costs.
- Line 400 Card stock and miscellaneous computer and office supplies
- Line 500 Computer and workstation for new position

5/5/99  
 Prepared by: Peter M. Nakamura, MD, MPH Phone: (907) 465-3090  
 Division: Public Health Date: 05/05/99  
 Approved by Commissioner: Karen Perdue, Commissioner Date: 5/5/99  
 Agency: Department of Health & Social Services

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(7)

**HOUSE COMMITTEE REPORT**

Date Referred to Committee: April 27, 1999

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 5/4/99

The RESOURCES Committee considered:

HB 213

HOUSE BILL NO. 213

MEDICAL USE OF MARIJUANA

"An Act relating to the medical use of marijuana; and providing for an effective date."

recommends it be replaced with the following committee substitute

CSHB 213 (HES)

the same title  
 a new title

additional referral to \_\_\_\_\_ Committee

attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) HSS

fiscal note(s) \_\_\_\_\_

zero fiscal note(s) CRD

zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Paul Dym</i>			✓	
<i>John English</i>				✓
<i>[Signature]</i>			✓	
<i>[Signature]</i>				✓
<i>Tom Burt</i>			✓	

CHAIR'S SIGNATURE

*Paul Dym*

*John English*

5/4/99

House HESS Committee Members,

I again reiterate all the POM's that I have sent about Marijuana to Senator Leman and Senate HESS. NONE OF YOU LISTEN TO THE PEOPLE! The very people who have suffered pain and agony of which marijuana was the only help to them. Shame Shame on you for not listening and paying attention to the vote of the people.

Barbara Parker (907) 333-7925

To the House HESS Committee,

5/3/99

I am for Medical Marijuana. I now have a prescription for Marinol but the price has to come down so I can afford it. Marinol has no practical use as a street drug because it is not affordable enough. I pay \$330 for 45 pills and have to take two per day. It is not affordable enough. I appeal the price.

Doug Duran  
(905) 949-8444



# Alaska State Legislature

Please enter into the record my testimony to the H HESS  
committee name

committee on HB 213, dated 5-3-99  
bill/subject

I AM OPPOSED TO HB-213. THE VOTER HEARD ALL THE FACTS AND VOTED FOR THE MEDICAL USE OF MARIJUANA. THIS CHRISTIAN ACT OF COMPASSION FOR THOSE WHO ARE SUFFERING SHOULD BECOME LAW UNCHANGED

Signed: Bruce Kraft  
Testifier

Representing (Optional)

PO BOX 1498 PALMER

Address

7456149

Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the HESS  
 committee name  
 committee on HB 213, dated 5-3-99  
 bill # / subject

*I would like to emphasize that I do not object to a medical marijuana registration system. I object to MANDATORY registration as if patients were sex offenders.*

Signed: Natalie K. Quigley  
 Testifier  
MYSELF  
 Representing (Optional)  
50016 FOREST GLEN ST., Kenai, AK 99611  
 Address  
907. 776. 5834  
 Phone number

**Subject: Today's HESS hearing**

**Date: Mon, 03 May 1999 20:13:37 -0800**

**From: Charles Rollins Jr <chuck@mosquionet.com>**

**Organization: Flashpoint**

**To: office\_of\_the\_governor@gov.state.ak.us**

Hello

I would like to address the general tone and comments of today's Hess Hearing on SB-213 the excuses, misinformation given and the general tone of the meeting was amazing. Statements from committee members claiming that the current medicinal cannabis measure allowed for an unlimited amount of cannabis to be grown, or that it allowed for public use are inaccurate. Both are addressed in the initiative measure. Other inaccuracies were made at this hearing.

The announcement at the beginning of the teleconference that testimony should be only limited to the proposed amendments, and not to debilitating conditions was misguided. How can you possibly learn about a subject unless you listen to the people it effects and consider all the facts?

The excuse 'we are only doing what the administration wants' is questionable. If the governor had requested legislation that required all females of the age of between 13 and 18 who become pregnant be given an abortion, would they then begin to write this legislation? No, they would stand their ground and refuse. How is someone who is fighting for medication that may prolong or enhance their lives by any means possible less a moral cause?

A final bit of irony, committee members claimed that the federal government was to blame. I as always keep an eye out for all legislation on matters related to drug policy. I have yet to see any resolution from our legislature calling on the United States government to reschedule cannabis, or permit medical use to correct this problem

Thank you

Charles Rollins Jr  
Box 55616  
North Pole Alaska 99705  
(907) 488-9030

# FISCAL NOTE

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

**BILL NO. HB 213**

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Commerce & Econ Dev.  
 Title An Act relating to the medical use of marijuana; BRU Occupational Licensing  
 and providing for an effective date. Component Occupational Licensing  
 Sponsor House HESS  
 Requester House HESS Component Serial No. 2360

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY99) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 New funds are not required to implement this bill.

Prepared by Jennifer Strickler, Administrative Manager Phone 465-2144  
 Division Occupational Licensing Date/Time 1/29/99 10:17 AM  
 Approved by Commissioner Deborah B. Sedwick Date 4/29/99  
 Agency Commerce & Economic Development

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Health, Education, and Social Services Committee  
Alaska State Legislature  
House of Representatives  
MEMORANDUM

May 4, 1999

**To:** Interested parties  
**From:** House HESS Committee Aide  
**RE:** CSHB 213 Medical Marijuana Legislation

The House HESS Committee is today considering CSHB 213, legislation we have introduced to "clean up" the medical marijuana law that became effective in March.

Be aware that CSHB 213 is receiving strong support from various organizations, agencies, and businesses:

The Alaska Association of Chiefs of Police has endorsed SSSB 94 (companion bill to CSHB 213) (see attached letter).

The Anchorage Assembly has urged the Alaska Legislature to make changes to the medical marijuana law that have been requested by the Anchorage Police Department and the Department of Public Safety (see attached resolution). CSHB 213 makes the changes requested by these agencies.

- The Dept. of Law, Dept. of Public Safety, and Dept. of Health & Social Services have testified that with appropriate amendments (now incorporated into a draft CS), they will support CSHB 213 and recommend that Governor Knowles sign it.
- The Alaska Federation of Republican Women recently passed a resolution supporting changes in Alaska law to ensure that marijuana will be legally available only for medical purposes, so as to "safeguard our children from influences of drugs and other harmful chemicals" (see attached resolution).
- The Republican Party of Alaska has endorsed SSSB 94 & CSHB 213 and similar legislation introduced in the House to fix the medical marijuana law (resolution attached).
- The Ketchikan Daily News recently voiced its support for HB 213 (editorial attached).
- Several Alaska business leaders support changes in the law (see attached letter).

If you have questions or need further information on CSHB 213, please contact the House HESS Committee aide, Wes Keller (907) 465-3759.

AMENDMENT

Offered in House (HES)

To: CS HB 213 (HES) [Luckhaupt/D/5/3/99]

Page 3, line 6

After "investigation" delete "*or prosecution*"

Page 4, line 4

Delete "*condition;*" and insert "*symptoms;*"

Page 4, lines 9-13

Following "*concluded that*" on line 9 delete all material through "*concluding that*" on line 12

1-LS0892D  
Luckhaupt  
5/3/99

**CS FOR HOUSE BILL NO. 213(HES)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the medical use of marijuana; and providing for an effective**  
2 **date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **\* Section 1.** AS 11.71 is amended by adding a new section to article 1 to read:

5 **Sec. 11.71.090. Affirmative defense to a prosecution under AS 11.71.030 -**  
6 **11.71.060; medical use of marijuana.** (a) In a prosecution under AS 11.71.030 -  
7 11.71.060 charging the manufacture, delivery, possession, possession with intent to  
8 manufacture or deliver, use, or display of a schedule VIA controlled substance, it is  
9 an affirmative defense that the defendant is a patient, or the primary caregiver or  
10 alternate caregiver for a patient, and

11 (1) at the time of the manufacture, delivery, possession, possession  
12 with intent to manufacture or deliver, use, or display, the patient was registered under  
13 AS 17.37;

14 (2) the entire amount of marijuana manufactured, delivered, possessed,

1 possessed with intent to manufacture or deliver, used, or displayed was intended by the  
 2 defendant to be used by the patient to address the debilitating medical condition  
 3 disclosed in the physician's statement described in AS 17.37.010(c);

4 (3) the manufacture, delivery, possession, possession with intent to  
 5 manufacture, deliver, use, or display complied with the requirements of AS 17.37; and

6 (4) if the defendant is the

7 (A) primary caregiver of the patient, the defendant was in  
 8 physical possession of the caregiver registry identification card at the time of  
 9 the manufacture, delivery, possession, possession with intent to manufacture or  
 10 deliver, use, or display; or

11 (B) alternate caregiver of the patient, the defendant was in  
 12 physical possession of the caregiver registry identification card at the time of  
 13 the manufacture, delivery, possession, possession with intent to manufacture or  
 14 deliver, use, or display.

15 (b) In this section,

16 (1) "alternate caregiver" has the meaning given in AS 17.37.070;

17 (2) "debilitating medical condition" has the meaning given in  
 18 AS 17.37.070;

19 (3) "patient" has the meaning given in AS 17.37.070;

20 (4) "physician" has the meaning given in AS 17.37.070;

21 (5) "primary caregiver" has the meaning given in AS 17.37.070.

22 \* Sec. 2. AS 11.71.190(b) is amended to read:

23 (b) Marijuana is a schedule VIA controlled substance [EXCEPT FOR  
 24 MARIJUANA POSSESSED FOR MEDICAL PURPOSES UNDER AS 17.37].

25 \* Sec. 3. AS 17.37.010 is amended to read:

26 **Sec. 17.37.010. Registry of patients and listing of caregivers [PATIENTS].**

27 (a) The department shall create and maintain a confidential registry of patients who  
 28 have applied for and are entitled to receive a registry identification card according to  
 29 the criteria set out [FORTH] in this chapter. The registry must also contain the  
 30 name of the primary caregiver and the name of the alternate caregiver of a  
 31 patient, if either is designated by the patient. Only one primary caregiver and

1 one alternate caregiver may be listed in the registry for a patient. The registry  
2 and the information contained within it are not a public record under  
3 AS 09.25.100 - 09.25.220. Peace officers and authorized employees of state or  
4 municipal [LOCAL] law enforcement agencies shall be granted access to the  
5 information contained within the department's confidential registry only

6 (1) in the course of a criminal investigation or prosecution;

7 (2) for the purpose of verifying that an individual who [THAT] has  
8 presented a registry identification card to a state or municipal [LOCAL] law  
9 enforcement official is lawfully in possession of such card; or

10 (3) for the purpose of determining that an individual who claims  
11 to be lawfully engaged in the medical use of marijuana is registered or listed with  
12 the department or is considered to be registered or listed under (g) of this section.

13 (b) Except as provided in (a) of this section, a [NO] person, other than  
14 authorized employees of the department in the course of their official duties, may  
15 not [SHALL] be permitted to gain access to names of patients, physicians, primary or  
16 alternate caregivers, [CARE-GIVERS] or any information related to such persons  
17 maintained in connection with the department's confidential registry [, EXCEPT FOR  
18 AUTHORIZED EMPLOYEES OF THE DEPARTMENT IN THE COURSE OF  
19 THEIR OFFICIAL DUTIES AND AUTHORIZED EMPLOYEES OF STATE OR  
20 LOCAL LAW ENFORCEMENT AGENCIES WHO HAVE STOPPED OR  
21 ARRESTED A PERSON WHO CLAIMS TO BE ENGAGED IN THE MEDICAL  
22 USE OF MARIJUANA AND IN THE POSSESSION OF A REGISTRY  
23 IDENTIFICATION CARD OR ITS FUNCTIONAL EQUIVALENT PURSUANT TO  
24 (e) OF THIS SECTION].

25 (c) In order to be placed on the state's confidential registry for the medical use  
26 [USES] of marijuana, an adult [A] patient or a parent or guardian of a minor  
27 patient shall provide to the department

28 (1) a statement signed by the patient's physician

29 (A) stating that the physician personally examined the  
30 patient and that the examination took place in the context of a bona fide  
31 physician-patient relationship;

1           **(B)** [THE ORIGINAL OR A COPY OF WRITTEN  
2           DOCUMENTATION] stating that the patient has been diagnosed with a  
3           debilitating medical condition **and specifying the nature of the patient's**  
4           **condition:**

5                   **(C) stating that the physician has explored other approved**  
6           **medications and treatments that might provide relief, [AND THE**  
7           **PHYSICIAN'S CONCLUSION]** that **are reasonably available to the patient,**  
8           **and that can be tolerated by the patient, and that the physician has**  
9           **concluded that the likely benefits of using marijuana outweigh the benefits**  
10           **of the use of other alternatives in addressing the patient's debilitating**  
11           **medical condition; and**

12                   **(D) concluding that the patient** might benefit from the medical  
13           use of marijuana;

14                   (2) **a sworn application on a form provided by the department**  
15           **containing the following information:**

16                   **(A)** the name, address, date of birth, and **Alaska driver's**  
17           **license or identification card [SOCIAL SECURITY]** number of the patient;

18                   **(B)** [(3)] the name, address, and telephone number of the  
19           patient's physician; and

20                   **(C)** [(4)] the name, [AND] address, **date of birth, and Alaska**  
21           **driver's license or identification card number** of the patient's primary  
22           **caregiver and alternate caregiver [CARE-GIVER,]** if **either [ONE]** is  
23           designated at the time of application, **along with the statements required**  
24           **under (d) of this section; and**

25                   **(3) if the patient is a minor, a statement by the minor's parent or**  
26           **guardian that the patient's physician has explained the possible risks and benefits**  
27           **of medical use of marijuana and that the parent or guardian consents to serve as**  
28           **the primary caregiver for the patient and to control the acquisition, possession,**  
29           **dosage, and frequency of use of marijuana by the patient.**

30                   (d) **A person may be listed under this section as the primary caregiver or**  
31           **alternate caregiver for a patient if the person submits a sworn statement on a**

1 form provided by the department that the person

2 (1) is at least 21 years of age;

3 (2) has never been convicted of a felony offense under AS 11.71 or  
4 AS 11.73 or a law or ordinance of another jurisdiction with elements similar to  
5 an offense under AS 11.71 or AS 11.73; and

6 (3) is not currently on probation or parole from this or another  
7 jurisdiction.

8 (e) A person may be a primary caregiver or alternate caregiver for only  
9 one patient at a time unless the primary caregiver or alternate caregiver is  
10 simultaneously caring for two or more patients who reside in the same household  
11 as the caregiver and are related to the caregiver by at least the fourth degree of  
12 kinship by blood or marriage.

13 (f) The department shall review the application and [VERIFY] all  
14 information submitted under (c) and (d) of this section within 30 days of receiving it.  
15 The department shall notify the patient [APPLICANT] that the patient's [HIS OR  
16 HER] application for a registry identification card has been denied if the department's  
17 [ITS] review of the information that [WHICH] the patient has provided discloses that  
18 the information required under [PURSUANT TO] (c) of this section has not been  
19 provided or has been falsified or that the patient is not otherwise qualified to be  
20 registered. If the department determines that the primary caregiver or alternate  
21 caregiver is not qualified under this section to be a primary caregiver or alternate  
22 caregiver, or if the information required under this section has not been provided  
23 or has been falsified, the department shall notify the patient of that determination  
24 and shall proceed to review the patient's application as if a primary caregiver or  
25 alternate caregiver was not designated. The patient may amend the application  
26 and designate a new primary caregiver or alternate caregiver at any time. The  
27 department may not list a newly designated primary caregiver or alternate  
28 caregiver until it determines that the newly designated primary caregiver or  
29 alternate caregiver is qualified under this section and that the information  
30 required under this section has been provided. Otherwise, not more than five days  
31 after verifying the [SUCH] information, the department shall issue a [SERIALLY

1 NUMBERED] registry identification card to the patient, and, if a primary caregiver  
2 for a patient has been listed in the registry, the department shall issue to the  
3 patient a duplicate of the patient's card clearly identified as the caregiver registry  
4 identification card, stating

5 (1) the patient's name, address, date of birth, and Alaska driver's  
6 license or identification and [SOCIAL SECURITY] number;

7 (2) that the patient is registered with the department [PATIENT'S  
8 NAME HAS BEEN CERTIFIED TO THE STATE HEALTH AGENCY] as a person  
9 who has a debilitating medical condition that [WHICH] the patient may address with  
10 the medical use of marijuana;

11 (3) the dates of issuance and expiration of the registry identification  
12 card; and

13 (4) the name, [AND] address, date of birth, and Alaska driver's  
14 license or identification card and number of the patient's primary caregiver and  
15 alternate caregiver [CARE-GIVER], if either [ANY] is designated [AT THE TIME  
16 OF APPLICATION].

17 (g) [(e)] If the department fails to deny the application and issue a registry  
18 identification card within 35 days of receipt of an application, the patient's application  
19 for the [SUCH] card is considered [WILL BE DEEMED] to have been approved.  
20 Receipt of an application shall be considered [DEEMED] to have occurred upon  
21 delivery to the department [OR DEPOSIT IN THE UNITED STATES MAILS].  
22 Notwithstanding this subsection, an [THE FOREGOING, NO] application may not  
23 [SHALL] be considered to have been [DEEMED] received before [PRIOR TO]  
24 June 1, 1999. If the department subsequently registers a patient or lists a primary  
25 caregiver or alternate caregiver, if either is designated, or denies the application  
26 or listing, that registration or listing or denial revokes the approval that is  
27 considered to have occurred under this subsection.

28 (h) A patient or a primary caregiver who is questioned by a [ANY] state or  
29 municipal [LOCAL] law enforcement official about the patient's or primary  
30 caregiver's [HIS OR HER] medical use of marijuana shall immediately show proper  
31 identification to the official and inform the official that the person is a registered

1 patient or listed primary caregiver for a registered patient and either show the  
2 official (1) the person's registry identification card, or (2) [PROVIDE] a copy of  
3 an application that has been pending without registration or denial for over 35  
4 days since received by [THE WRITTEN DOCUMENTATION SUBMITTED TO] the  
5 department and proof of the date of [MAILING OR OTHER TRANSMISSION OF  
6 THE WRITTEN DOCUMENTATION FOR] delivery to the department, which shall  
7 be accorded the same legal effect as a registry identification card [,] until the patient  
8 receives actual notice that the application has been denied.

9 (i) A [NO] person may not [SHALL] apply for a registry identification card  
10 more than once every six months.

11 (j) [(f)] The denial or revocation of a registry identification card or the  
12 removal of a patient from the registry or the listing of a caregiver shall be  
13 considered a final agency action subject to judicial review. Only the patient, or the  
14 parent or guardian of a patient who is a minor, has [WHOSE APPLICATION HAS  
15 BEEN DENIED SHALL HAVE] standing to contest the final agency action.

16 (k) [(g)] When there has been a change in the name, address, or physician [,  
17 OR PRIMARY CARE-GIVER] of a patient who has qualified for a registry  
18 identification card, or a change in the name or address of the patient's primary  
19 caregiver or alternate caregiver, that patient must notify the department [STATE  
20 HEALTH AGENCY] of the [ANY SUCH] change within 10 days. To maintain an  
21 effective registry identification card, a patient must annually resubmit updated written  
22 documentation to the department [STATE HEALTH AGENCY], as well as the name  
23 and address of the patient's primary caregiver or alternate caregiver [CARE-GIVER],  
24 if any.

25 (l) [(h)] A patient who no longer has a debilitating medical condition and the  
26 patient's primary caregiver, if any, shall return all [HIS OR HER] registry  
27 identification cards [CARD] to the department within 24 hours of receiving the  
28 [SUCH] diagnosis by the patient's [HIS OR HER] physician.

29 (m) A copy of a registry identification card is not valid. A registry  
30 identification card is not valid if the card has been altered, mutilated in a way  
31 that impairs its legibility, or laminated.

1           (n) The department may revoke a patient's registration if the department  
2           determines that the patient has violated a provision of this chapter or AS 11.71.

3           (o) The department may remove a primary caregiver or alternate  
4           caregiver from the registry if the department determines that the primary  
5           caregiver or alternate caregiver is not qualified to be listed or has violated a  
6           provision of this chapter or AS 11.71.

7           (p) [(i)] The department may determine and levy reasonable fees to pay for  
8           any administrative costs associated with its [THEIR] role in administering this  
9           chapter [THIS PROGRAM].

10           (q) A primary caregiver may only act as the primary caregiver for the  
11           patient when the primary caregiver is in physical possession of the caregiver  
12           registry identification card. An alternate caregiver may only act as the primary  
13           caregiver for the patient when the alternate caregiver is in physical possession of  
14           the caregiver registry identification card.

15 \* Sec. 4. AS 17.37.030 is amended to read:

16           Sec. 17.37.030. Privileged medical use of marijuana. (a) A patient,  
17           primary caregiver, or alternate caregiver registered with the department under  
18           this chapter has an affirmative defense to a criminal prosecution related to  
19           marijuana to the extent provided in AS 11.71.090 [EXCEPT AS OTHERWISE  
20           PROVIDED IN AS 17.37.040, NO PATIENT OR PRIMARY CARE-GIVER MAY

21           BE FOUND GUILTY OF, OR PENALIZED IN ANY MANNER FOR, A

22           VIOLATION OF ANY PROVISION OF LAW RELATED TO THE MEDICAL USE

23           OF MARIJUANA, WHERE IT IS PROVED BY A PREPONDERANCE OF THE

24           EVIDENCE THAT

25                   (1) THE PATIENT WAS DIAGNOSED BY A PHYSICIAN

26                   AS HAVING A DEBILITATING MEDICAL CONDITION;

27                   (2) THE PATIENT WAS ADVISED BY HIS OR HER PHYSICIAN,

28                   IN THE CONTEXT OF A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP,

29                   THAT THE PATIENT MIGHT BENEFIT FROM THE MEDICAL USE OF

30                   MARIJUANA IN CONNECTION WITH A DEBILITATING MEDICAL

31                   CONDITION; AND

1 (3) THE PATIENT AND HIS OR HER PRIMARY CARE-GIVER  
2 WERE COLLECTIVELY IN POSSESSION OF AMOUNTS OF MARIJUANA ONLY  
3 AS PERMITTED UNDER THIS SECTION].

4 (b) Except as otherwise provided by law, a person is not [IN AS 17.37.040,  
5 NO PATIENT OR PRIMARY CARE-GIVER IN LAWFUL POSSESSION OF A  
6 REGISTRY IDENTIFICATION CARD SHALL BE] subject to arrest, prosecution, or  
7 penalty in any manner for [MEDICAL USE OF MARIJUANA OR FOR] applying to  
8 have the person's [HIS OR HER] name placed on the confidential registry  
9 [REGISTER] maintained by the department under AS 17.37.010.

10 (c) A [NO] physician is not [SHALL BE] subject to any penalty, including  
11 arrest, prosecution, or disciplinary proceeding, or denial of [BE DENIED] any right  
12 or privilege, for

13 (1) advising a patient whom the physician has diagnosed as having a  
14 debilitating medical condition [,] about the risks and benefits of medical use of  
15 marijuana or that the patient [HE OR SHE] might benefit from the medical use of  
16 marijuana [,] provided that the [SUCH] advice is based upon the physician's  
17 contemporaneous assessment in the context of a bona fide physician-patient  
18 relationship of

19 (A) the patient's medical history and current medical condition;

20 and

21 (B) other approved medications and treatments that might  
22 provide relief and that are reasonably available to the patient and that can  
23 be tolerated by the patient [AND A BONA FIDE PHYSICIAN-PATIENT  
24 RELATIONSHIP]; or

25 (2) providing a patient with a written statement in an application for  
26 registration under AS 17.37.010 [WRITTEN DOCUMENTATION, BASED UPON  
27 THE PHYSICIAN'S CONTEMPORANEOUS ASSESSMENT OF THE PATIENT'S  
28 MEDICAL HISTORY AND CURRENT MEDICAL CONDITION AND A BONA  
29 FIDE PHYSICIAN-PATIENT RELATIONSHIP, STATING THAT THE PATIENT  
30 HAS A DEBILITATING MEDICAL CONDITION AND MIGHT BENEFIT FROM  
31 THE MEDICAL USE OF MARIJUANA].

1 (d) Notwithstanding the [FOREGOING] provisions of this section, a [, NO]  
2 person, including a patient, [OR] primary caregiver, or alternate caregiver, is not  
3 [CARE-GIVER, SHALL BE] entitled to the protection of this chapter [SECTION] for  
4 the person's [HIS OR HER] acquisition, possession, cultivation, use, sale, distribution,  
5 or [AND/OR] transportation of marijuana for nonmedical [NON-MEDICAL] use.

6 [(e) ANY PROPERTY INTEREST THAT IS POSSESSED, OWNED, OR  
7 USED IN CONNECTION WITH THE MEDICAL USE OF MARIJUANA, OR ACTS  
8 INCIDENTAL TO SUCH USE, SHALL NOT BE HARMED, NEGLECTED,  
9 INJURED, OR DESTROYED WHILE IN THE POSSESSION OF STATE OR  
10 LOCAL LAW ENFORCEMENT OFFICIALS WHERE SUCH PROPERTY HAS  
11 BEEN SEIZED IN CONNECTION WITH THE CLAIMED MEDICAL USE OF  
12 MARIJUANA. ANY SUCH PROPERTY INTEREST SHALL NOT BE FORFEITED  
13 UNDER ANY PROVISION OF STATE OR LOCAL LAW PROVIDING FOR THE  
14 FORFEITURE OF PROPERTY OTHER THAN AS A SENTENCE IMPOSED  
15 AFTER CONVICTION OF A CRIMINAL OFFENSE OR ENTRY OF A PLEA OF  
16 GUILTY TO SUCH OFFENSE. MARIJUANA AND PARAPHERNALIA SEIZED  
17 BY STATE OR LOCAL LAW ENFORCEMENT OFFICIALS FROM A PATIENT  
18 OR PRIMARY CARE-GIVER IN CONNECTION WITH THE CLAIMED MEDICAL  
19 USE OF MARIJUANA SHALL BE RETURNED IMMEDIATELY UPON THE  
20 DETERMINATION THAT THE PATIENT OR PRIMARY CARE-GIVER IS  
21 ENTITLED TO THE PROTECTION CONTAINED IN THIS SECTION AS MAY BE  
22 EVIDENCED, FOR EXAMPLE, BY A DECISION NOT TO PROSECUTE, THE  
23 DISMISSAL OF CHARGES, OR ACQUITTAL.]

24 \* Sec. 5. AS 17.37.040 is amended to read:

25 Sec. 17.37.040. Restrictions on medical use of marijuana. (a) A [NO]  
26 patient, primary caregiver, or alternate caregiver may not [IN LAWFUL  
27 POSSESSION OF A REGISTRY IDENTIFICATION CARD SHALL]

28 (1) engage in the medical use of marijuana in a way that endangers the  
29 health or well-being of any person;

30 (2) engage in the medical use of marijuana in plain view of, or in a  
31 place open to, the general public; this paragraph does not prohibit a patient or

1 primary caregiver from possessing marijuana in a place open to the general  
2 public if

3 (A) the person possesses, in a closed container carried on the  
4 person, one ounce or less of marijuana in usable form;

5 (B) the marijuana is not visible to anyone other than the  
6 patient or primary caregiver; and

7 (C) the possession is limited to that necessary to transport  
8 the marijuana directly to the patient or primary caregiver or directly to  
9 a place where the patient or primary caregiver may lawfully possess or use  
10 the marijuana; [OR]

11 (3) sell or distribute marijuana to any person, except that a patient  
12 may deliver marijuana to the patient's primary caregiver and a primary caregiver  
13 may deliver marijuana to the patient for whom the caregiver is listed; or

14 (4) possess more than

15 (A) one ounce of marijuana in usable form; and

16 (B) six marijuana plants, with no more than three mature  
17 and flowering plants producing usable marijuana at any one time [WHO  
18 IS KNOWN TO THE PATIENT NOT TO BE EITHER IN LAWFUL  
19 POSSESSION OF A REGISTRY IDENTIFICATION CARD OR ELIGIBLE  
20 FOR SUCH CARD].

21 (b) Any patient found by a preponderance of the evidence to have knowingly  
22 [WILLFULLY] violated the provisions of this chapter shall be precluded from  
23 obtaining or using a registry identification card for the medical use of marijuana for  
24 a period of one year. In this subsection, "knowingly" has the meaning given in  
25 AS 11.81.900.

26 (c) A [NO] governmental, private, or [ANY] other health insurance provider  
27 is not [SHALL BE REQUIRED TO BE] liable for any claim for reimbursement for  
28 expenses associated with [THE] medical use of marijuana.

29 (d) Nothing in this chapter requires [SECTION SHALL REQUIRE] any  
30 accommodation of any medical use of marijuana

31 (1) in any place of employment;

1 (2) in any correctional facility, medical facility, or facility monitored  
2 by the department or the Department of Administration;

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

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

5 (5) on a school bus.

6 \* Sec. 6. AS 17.37.060 is amended to read:

7 Sec. 17.37.060. Addition of debilitating medical conditions. Not later than  
8 90 days after the effective date of this Act [JUNE 1, 1999], the department shall  
9 adopt [PROMULGATE] regulations under AS 44.62 (Administrative Procedure Act)  
10 governing the manner in which it may consider adding debilitating medical conditions  
11 to the list provided in AS 17.37.070 [THIS SECTION]. After the adoption of the  
12 regulations [JUNE 1, 1999], the department shall also accept for consideration  
13 physician or patient initiated petitions to add debilitating medical conditions to the list  
14 provided in AS 17.37.070 [THIS SECTION] and, after hearing, shall approve or deny  
15 the [SUCH] petitions within 180 days of submission. The denial of [SUCH] a petition  
16 shall be considered a final agency action subject to judicial review.

17 \* Sec. 7. AS 17.37.070 is amended to read:

18 Sec. 17.37.070. Definitions. In this chapter, unless the context clearly requires  
19 otherwise,

20 (1) "alternate caregiver" means a person who is listed as an  
21 alternate caregiver under AS 17.37.010;

22 (2) "bona fide physician-patient relationship" means that the  
23 physician obtained a patient history, performed an in-person physical examination  
24 of the patient, and documented written findings, diagnoses, recommendations, and  
25 prescriptions in written patient medical records maintained by the physician;

26 (3) "correctional facility" has the meaning given in AS 33.30.901  
27 [MEANS A STATE PRISON INSTITUTION OPERATED AND MANAGED BY  
28 EMPLOYEES OF THE DEPARTMENT OF CORRECTIONS OR PROVIDED TO  
29 THE DEPARTMENT OF CORRECTIONS BY AGREEMENT UNDER AS 33.30.031  
30 FOR THE CARE, CONFINEMENT OR DISCIPLINE OF PRISONERS];

31 (4) [(2)] "debilitating medical condition" means

1 (A) cancer, glaucoma, positive status for human  
2 immunodeficiency virus, or acquired immune deficiency syndrome, or treatment  
3 for any of these conditions;

4 (B) any chronic or debilitating disease or treatment for such  
5 diseases, which produces, for a specific patient, one or more of the following,  
6 and for which, in the professional opinion of the patient's physician, such  
7 condition or conditions reasonably may be alleviated by the medical use of  
8 marijuana: cachexia; severe pain; severe nausea; seizures, including those that  
9 are characteristic of epilepsy; or persistent muscle spasms, including those that  
10 are characteristic of multiple sclerosis; or

11 (C) any other medical condition, or treatment for such  
12 condition, approved by the department, under [PURSUANT TO ITS  
13 AUTHORITY TO PROMULGATE] regulations adopted under AS 17.37.060  
14 or [ITS] approval of a [ANY] petition submitted [BY A PATIENT OR  
15 PHYSICIAN] under AS 17.37.060;

16 (5) [(3)] "department" means the Department of Health and Social  
17 Services;

18 (6) "facility monitored by the department or the Department of  
19 Administration" means an institution, building, office, or home operated by the  
20 department or the Department of Administration, funded by the department or  
21 the Department of Administration, under contract with the department or the  
22 Department of Administration, inspected by the department or the Department  
23 of Administration, designated by the department or the Department of  
24 Administration, or licensed by the department or the Department of  
25 Administration, for the care of

26 (A) juveniles; for the purposes of this subparagraph,  
27 "institution" includes a foster home and a group home, and a juvenile  
28 detention facility; a juvenile detention home, a juvenile work camp, and a  
29 treatment facility, as those terms are defined in AS 47.14.990;

30 (B) the elderly; for the purposes of this subparagraph,  
31 "institution" includes an assisted living home as defined in AS 47.33.990

1 and a Pioneers' Home operated under AS 47.55;

2 (C) the mentally ill; for the purposes of this subparagraph,  
3 "institution" includes a designated treatment facility and an evaluation  
4 facility, as those terms are defined in AS 47.30.915;

5 (7) "medical facility" means an institution, building, office, or home  
6 providing medical services, and includes a hospital, clinic, physician's office, or  
7 health facility as defined in AS 47.07.900, and a facility providing hospice care or  
8 rehabilitative services, as those terms are defined in AS 47.07.900;

9 (8) [(4)] "medical use" means the acquisition, possession, cultivation,  
10 use or [AND/OR] transportation of marijuana or [AND/OR] paraphernalia related to  
11 the administration of [SUCH] marijuana to alleviate [ADDRESS THE SYMPTOMS  
12 OR EFFECTS OF] a debilitating medical condition under the provisions of this  
13 chapter and AS 11.71.090 [ONLY AFTER A PHYSICIAN HAS AUTHORIZED  
14 SUCH MEDICAL USE BY A DIAGNOSIS OF THE PATIENT'S DEBILITATING  
15 MEDICAL CONDITION];

16 (9) [(5)] "patient" means a person who has a debilitating medical  
17 condition;

18 (10) [(6)] "physician" means a person licensed to practice medicine in  
19 this state or an officer in the regular medical service of the armed forces of the United  
20 States or the United States Public Health Service while in the discharge of their official  
21 duties, or while volunteering services without pay or other remuneration to a hospital,  
22 clinic, medical office, or other medical facility in this state;

23 (11) [(7)] "primary caregiver [CARE-GIVER]" means a person listed  
24 as a primary caregiver under AS 17.37.010 and in physical possession of a  
25 caregiver registry identification card; "primary caregiver" also includes an  
26 alternate caregiver when the alternate caregiver is in physical possession of the  
27 caregiver registry identification card [, OTHER THAN THE PATIENT'S  
28 PHYSICIAN, WHO IS 18 YEARS OF AGE OR OLDER AND HAS SIGNIFICANT  
29 RESPONSIBILITY FOR MANAGING THE WELL-BEING OF A PATIENT WHO  
30 HAS A DEBILITATING MEDICAL CONDITION];

31 (12) [(8)] "PRISONER" MEANS A PERSON DETAINED OR

1           CONFINED IN A CORRECTIONAL FACILITY, WHETHER BY ARREST,  
2           CONVICTION, OR COURT ORDER, OR A PERSON HELD AS A WITNESS OR  
3           OTHERWISE, INCLUDING MUNICIPAL PRISONERS HELD UNDER CONTRACT  
4           AND JUVENILES HELD UNDER THE AUTHORITY OF AS 47.10;

5                       (9) "REGISTRY IDENTIFICATION CARD" MEANS A DOCUMENT  
6           ISSUED BY THE DEPARTMENT WHICH IDENTIFIES A PATIENT  
7           AUTHORIZED TO ENGAGE IN THE MEDICAL USE OF MARIJUANA AND THE  
8           PATIENT'S PRIMARY CARE-GIVER, IF ANY;

9                       (10)] "Usable form" and "usable marijuana" means the seeds, leaves,  
10          buds, and flowers of the plant (genus) cannabis, but does not include the stalks or roots  
11          [;

12                      (11) "WRITTEN DOCUMENTATION" MEANS A STATEMENT  
13          SIGNED BY A PATIENT'S PHYSICIAN OR COPIES OF THE PATIENT'S  
14          PERTINENT MEDICAL RECORDS].

15       \* **Sec. 8.** AS 17.37.020 and 17.37.050 are repealed.

16       \* **Sec. 9.** This Act takes effect immediately under AS 01.10.070(c).

## EDITORIAL

# Make changes to law

It's been decided by Alaska's voters that, 1. marijuana is an illegal substance, but 2. it should be available to relieve severe pain and nausea of terminally ill patients.

Voters said that in two elections. The latest was this past fall when Ballot Measure No. 8 permitted medicinal use of marijuana.

The state's Department of Public Safety, of course, will uphold the laws. Its officials, however, need more guidelines and specifics in response to the Medical Marijuana Act. Such specifics will prevent abuse and misuse of the law.

The Anchorage Assembly realizes that. It passed a resolution supporting changes to the act. The Alaska Association of Chiefs of Police has added its endorsement for more specific language in the act. Other bodies representing large portions of the state and key officials responsible for upholding the law are expected to follow suit.

The Marijuana Act establishes a state registry for patients using marijuana for medicinal purposes, but it doesn't require registration. Police need a registry requirement to distinguish between legal medical users and illegal recreational users of marijuana. Such a change in the act would protect legitimate marijuana-using patients and prevent abuses.

Law enforcement officials also are asking that the act allow them access to the registry during investigations. Official access during investigations and prosecutions likely would help in separating legal users from non-legal users.

Public Safety seeks possession limits of one ounce of usable marijuana and six plants at any one time for medicinal users. That means legal users would possess only what they use, as prescription drug users do. Changes to the marijuana act also would require marijuana-using patients and their caregivers to carry state identification cards. The caregivers would be limited to one patient, and the patients would be limited to one caregiver. Anyone with a criminal record would not be permitted to be a caregiver. Caregivers, under the act, are not required to be physicians.

All of those proposed changes and others are reasonable. Marijuana is a harmful drug. While it might relieve pain and nausea for terminally ill patients, it also has dangerous side effects. It isn't approved by the Food and Drug Administration, and criminals go to great lengths to produce and sell it. Our children often are their customers. Alaska's marijuana act can and should protect our children. Law enforcement officials need better guidelines, more specific guidelines, to do that. Even supporters of medicinal marijuana use agree with that.

Those guidelines are spelled out in Senate Bill 94. The House has introduced a similar bill (No. 213). The House's Health, Education and Social Services committee will have a hearing on the bill Tuesday. Committee members and the Legislature need to know that while Alaskans are compassionate, we also care when it comes to the health and well-being of our children. Legislators could come to any conclusion if we keep silent — especially if only supporters of unlimited marijuana legalization speak out.

**RESOLUTION FOLLOWS:**

**Resolution No. 6**

A Resolution Concerning the Marijuana law

By Alaska Federation of Republican Women

In session April 30 &ndash; May 1, 1999, Juneau, AK

WHEREAS, Alaskans must safeguard our children from influences of drugs and other harmful chemicals, and

WHEREAS, Alaska must aggressively pursue the "War on Drugs"

NOW, THEREFORE BE IT RESOLVED that the Alaska Federation of Republican Women urges the Alaska Legislature to carefully craft and develop law that will limit the use of marijuana for medicinal purposes only.

Passed this 1<sup>st</sup> day of May, 1999 in Juneau, Alaska

---

Pauline Martens, President

Alaska Federation of Republican Women

---

Eileen VanWyhe, Secretary

Alaska Federation of Republican

# Alaska Association of Chiefs of Police



April 27, 1999

Senator Loran Leman  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, AK 99801-1182

Dear Senator Leman:

This letter is written in support of Senate Bill 94, *An Act relating to the medical use of marijuana; and providing for an effective date.*

The Alaska Association of Chiefs of Police supports this amendment to the original legislation because it significantly clarifies the law as it pertains to the medical use of marijuana. The current law, as written, provides little guidance for law enforcement or the courts. Specifically, we believe the issues of registration for the primary care giver and the patient must be addressed. The law must also be clear as to the amount of marijuana that can be grown for medical purposes.

With these amendments, we are confident the law will be better understood and enforceable.

Sincerely,

A handwritten signature in black ink, appearing to read "Duane S. Ueland", is written over a faint, larger signature.

Duane S. Ueland, President  
Alaska Association of Chiefs of Police

CLERK'S OFFICE

APPROVED

Date: 4/27/99

Submitted by: Assemblymember CARLSON

Prepared by: Assembly Office

For reading: APRIL 27, 1999

ANCHORAGE, ALASKA

AR NO. 99- 105

**A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY SUPPORTING  
AMENDMENTS TO ALASKA STATUTES GOVERNING THE USE OF MARIJUANA FOR  
MEDICAL PURPOSES**

---

WHEREAS, in November 1998, the voters of Alaska approved Ballot Measure No. 8, to allow certain patients with debilitating medical conditions to use marijuana for medical purposes; and

WHEREAS, the law created by this initiative became effective on March 4, 1999; and

WHEREAS, the law establishes a state registry for patients using marijuana but does not require registration in order for persons to have a legal right to smoke or otherwise ingest marijuana for what are deemed to be medical purposes; and

WHEREAS, the new law allows persons who choose not to register with the State to smoke marijuana in a public place and in a way that endangers the health and well-being of other persons; and

WHEREAS, the new law may result in policies requiring that the "medical use" of marijuana be accommodated at the workplace, in schools, on school buses, and in prisons; and

WHEREAS, the new law completely removes marijuana possessed for medical purposes from the list of controlled substances found in Title 11, Chapter 71 of Alaska Statutes, a list which otherwise includes and regulates all other drugs that can be presented by doctors; and

WHEREAS, the Chief of the Anchorage Police Department has testified before the Alaska Legislature that the lack of a registration requirement and the absence of firm possession limits in the new law will make it difficult for law enforcement to distinguish between legitimate and illegitimate users of marijuana; and

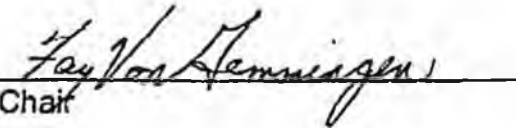
WHEREAS, the Deputy Director of the Alaska Department of Public Safety has testified before the Alaska Legislature that the failure of the new law to include mandatory registration and firm possession limits will make it difficult for law enforcement officers to effectively enforce Alaska's drug laws; and

1 WHEREAS, failure of the new law to draw a "bright line" between legitimate and  
2 illegitimate use of marijuana may actually result in unintentional arrest and/or prosecution  
3 of individuals who have a bona fide need to use marijuana for medical purposes.  
4

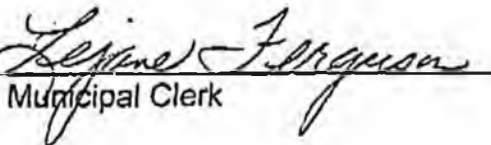
5 NOW, THEREFORE, the Anchorage Assembly resolves:  
6

7 That the Assembly urges the Alaska Legislature to enact legislation that will amend  
8 the medical marijuana law to address the concerns raised by representatives of the  
9 Anchorage Police Department and the Department of Public Safety, including a  
10 requirement that all persons using marijuana for medical purposes be registered and  
11 establishing firm limits on the amount of marijuana that can be possessed for medical use.  
12

13 PASSED AND APPROVED by the Anchorage Assembly this 27th day of  
14 April, 1999.  
15

16  
17  
18   
19  
20  
Chair

21 ATTEST:  
22

23  
24   
25  
26 Municipal Clerk  
27  
28

# The Republican Party of Alaska

Tom McKay, Chairman



## REPUBLICAN PARTY OF ALASKA RESOLUTION 99-001

APR 26 1999

WHEREAS marijuana is an illegal substance which has harmful effects on our communities ranging from increased crime to homicide; and

WHEREAS the American Medical Association recently issued reports stating that smoking marijuana has dubious, if any, medical benefits, and many dangerous side effects; and

WHEREAS the Food and Drug Administration has not approved marijuana as a safe, effective or legal drug; and

WHEREAS the marijuana black market presents a burgeoning and expensive problem for Alaska's communities, law enforcement and local government; and

WHEREAS the potential for rampant corruption and abuse of Alaska's medical marijuana law exists while in its present form; and

WHEREAS for the past decade extensive national efforts and millions of dollars have been expended to teach our children that illegal drug use is wrong, undesirable and dangerous; and

WHEREAS the passage of the initiative in its present form sends a terrible message to our children that smoking marijuana has legitimate medical benefit and is socially redeemable; and

WHEREAS the medical marijuana initiative passed by Alaska voters on November 3, 1998, has serious flaws and loopholes publicly acknowledged by its leading proponent, David Finklestein, which ultimately jeopardizes law enforcement efforts against illegal drug use, production and sale; and

WHEREAS SB 94 has been introduced by Senator Loren Leman in the Alaska Senate, and a companion bill will soon be introduced in the Alaska House by Representative Fred Dyson, to close loopholes and fix flaws to the medical marijuana law.

THEREFORE LET IT BE RESOLVED THAT the Republican Party of Alaska fully supports efforts by Senator Leman, Representative Dyson, and others to fix dangerous flaws to the medical marijuana law.

DATED this 17<sup>th</sup> day of April, 1999 in Valdez, Alaska.

Tom McKay, Chairman

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. HB 213

Revision Date: \_\_\_\_\_ Dept. Affected: Health and Social Services  
 Title: An Act relating to the medical use of marijuana; and BRU: State Health Services  
 Component: Bureau of Vital Statistics  
 Sponsor: House (Hes) COMPONENT SERIAL NO. 961  
 Requestor: House (HES) See also (SN#): \_\_\_\_\_

**Expenditures/Revenues:** (Thousands of Dollars)

OPERATING	FY00	FY01	FY02	FY03	FY04	FY05
PERSONAL SERVICES	37.7	38.0	39.0	40.0	41.0	42.0
TRAVEL						
CONTRACTUAL	40.0	40.9	41.8	37.3	38.1	38.9
SUPPLIES	3.0	1.5	3.0	1.5	3.0	1.5
EQUIPMENT	7.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>87.7</b>	<b>80.4</b>	<b>83.8</b>	<b>78.8</b>	<b>82.1</b>	<b>82.4</b>

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ( )						
-------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	82.7	75.4	78.8	73.8	77.1	77.4
1005 GF/Program Receipts	5.0	5.0	5.0	5.0	5.0	5.0
1037 GF/Mental Health						
Other (please specify)						
<b>TOTAL</b>	<b>87.7</b>	<b>80.4</b>	<b>83.8</b>	<b>78.8</b>	<b>82.1</b>	<b>82.4</b>

**POSITIONS:**

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

Estimate of any current year (FY99) cost: \_\_\_\_\_

**ANALYSIS:** (Attach a separate page if necessary)

The Department estimates that changing the registry from voluntary to mandatory will double the workload. The department will also have to redraft the regulations covering medical marijuana and reprocess them through public hearings. The department will have to contract for the medical expertise to evaluate waiver requests. These will require the following:

- Line 100 One Administrative Clerk III for data entry and review of records
- Line 300 Redraft existing regulations to conform to amendments. Contract for the medical expertise to evaluate waiver requests and operational contract costs.
- Line 400 Card stock and miscellaneous computer and office supplies
- Line 500 Computer and workstation for new position

Prepared by: Peter M. Nakamura, MD, MPH  
 Division: Public Health  
 Approved by Commissioner: Karen Perdue, Commissioner  
 Agency: Department of Health & Social Services

Phone: (907) 465-3090  
 Date: 04/28/99  
 Date: 4/29/99

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# Alaskans for Medical Rights

P.O. Box 102320  
Anchorage, AK 99510-2320  
Phone 277-2567  
Fax 277-2565

March 26, 1999 Via Fax

Ms. Sharon Lowe  
DH&SS, Division of Public Health  
PO Box 110610  
Anchorage, AK 99511

Dear Ms. Lowe:

We would like to provide additional comments on the proposed regulations for the new medical marijuana law. We believe the following regulations are consistent with the provisions in the statute, will protect and promote the public health, and assist the Department and the State in conducting its business. The locations referenced may or may not be the proper location for these additions and changes to the regulations, and there may be additional authorities available for them as well.

7 AAC 34.020. Add "in the context of a bona fide physician-patient relationship" to doctor's recommendation required for registry documentation. 17.37.010(c) 18.05.040

7 AAC 34.020. Provide a registration card to the primary caregiver as well as the patient. 17.37.010(d) 18.05.040

7 AAC 34.020. Require a written statement from parents of minors that they will meet the requirements of subsection (g) and that they will also control "possession" by the minor. 17.37.050 18.05.040

7 AAC 34.030. Explicitly limit each patient to one caregiver (already implicit). 17.37.010(d)(4) 18.05.040

7 AAC 34.030. Provide an additional exception where primary caregiver is simultaneously caring for two or more patients who are related to the caregiver by at least the fourth degree of of kinship by blood or marriage. 17.37.010(d)(4) 18.05.040

7 AAC 34.030. Include additional requirements for primary caregivers: 1) can't have committed a drug violation felony, or be on probation or parole; 2) must have primary responsibility for attending to the basic needs of and managing the care and well-being of a patient; and, 3) doesn't include a person whose primary relationship with the patient is to supply the patient with marijuana. 17.37.070(g) 18.05.040

7 AAC 34.990. Add medical facilities or facilities monitored by DH&SS or DOA to the locations where no accomodation of use is required. 17.37.040(d) 18.05.040

7 AAC 34.990. Clarify that the reference to the "list provided in this section" is the debilitating medical condition list. 17.37.060 18.05.040

The following regulations are also consistent will the statute and will protect and promote the public health, but would go into a new section in the regulations:

Require written recommendation from physician for privileged medical use of marijuana.  
17.37.030(a) 18.05.040

Clarify that limits on amounts apply to all patients, as was intended. 17.37.030(a)(3) 18.05.040

Clarify that prohibition on non-medical use applies to all patients, as was intended. 17.37.030(d)  
18.05.040

Clarify that these provisions (don't endanger others, no public use, no distribution to non-patients) apply to any patient using medical marijuana, as well as primary caregivers, as was intended.  
17.37.040(a) 18.05.040

Clarify that the non-accomodation zones apply to all patients, as was intended. 17.37.040(d)(1)-(5)  
18.05.040

Thank you for considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read "David Finkelstein", written in a cursive style.

David Finkelstein



Health, Education, and Social Services Committee  
Alaska State Legislature  
House of Representatives

**Sponsor Statement – HB 213**

**“An Act relating to the medical use of marijuana;  
and providing for an effective date.”**

On March 25, 1999 the House HESS Committee held a public hearing to explore enforcement and ambiguity problems which have come to light on the medical marijuana initiative (Ballot Measure No. 8). The result is House Bill 213 which proposes several amendments to AS 17.37.010 – 17.37.070, the “Medical Uses of Marijuana for Persons Suffering from Debilitating Medical Conditions Act.”

In the 1998 Official Election Pamphlet, the sponsors of the medical marijuana initiative (Ballot Measure No. 8) stated their proposal was designed to help “terminally ill patients and others suffering from debilitating medical conditions.” The sponsors further stated, “Marijuana would still be illegal for non-medical use. Ballot Measure No. 8 provides full protection against abuse of the new law.”

Scrutiny of the marijuana act by legal experts and people who work in law enforcement and youth services has revealed defects that create significant potential for abuse. The defects include legal “loopholes,” ill-defined terms, and vague language. HB 213 corrects these deficiencies – it will still allow use of marijuana for “medical” purposes, but ensures that use of marijuana for “recreational” and other non-medical purposes remains illegal. HB 213 was written with input from employees of the Department of Public Safety, the Department of Law, and local law enforcement agencies, and the sponsor of SB 94.

Earlier this decade, in 1990, Alaska voters approved Ballot Measure No. 2 to re-criminalize marijuana. In the 1998 election, the sponsors of the medical marijuana initiative advertised that they were not seeking a general legalization of marijuana – in effect, they were not proposing a repeal of Ballot Measure No. 2 from 1990. Therefore, it is prudent to conclude that most Alaska voters who supported Measure 8 last year did so with the understanding that they were not acting to repeal the tough anti-marijuana laws made effective with the passage of Measure 2. HB 213 is designed to reconcile the provisions of these two different initiatives – both of which represent the majority will of the Alaskan people. It does not repeal the medical marijuana initiative, which the Legislature is prohibited from doing under the constitution. Rather, HB 213 will ensure the initiative works as it was intended.



Health, Education, and Social Services Committee  
Alaska State Legislature  
House of Representatives

One of the more curious deficiencies in the medical marijuana initiative can be found at AS 17.37.010. This section outlines an elaborate registration system for medical marijuana patients – but fails to actually require anyone to sign up to legally use marijuana. This glaring omission makes it difficult for law enforcement to distinguish valid users from recreational users. HB 213 corrects this flaw by making registration mandatory for both patients and primary caregivers, and requiring users to present a registry identification card when questioned by a law enforcement officer.

HB 213 places reasonable limits on the places where marijuana can be manufactured, exchanged, or used for medical purposes. The legislation also creates new standards for those persons who are designated as “primary caregivers” for patients using marijuana. Only one caregiver can be registered for a patient at any given time, and this person must be at least 21 years of age, not currently on probation or parole, and never convicted of a felony violation of the drug laws of Alaska or other state.

-2-

HB 213 is the companion bill to SB 94

Updated 4/30/1999, House HESS

## Analysis of HB 213 LS0892\A

HB 213 makes the following changes to the Medical Marijuana Act (MMA) consistent with the perceived needs of the Department of Public Safety so our state's drug laws can be successfully enforced:

- **Registration:** To protect all medical marijuana patients, require registration with DHSS. The MMA establishes a state registry, but participation is not required. Without registration, it becomes difficult for police to distinguish between medical use (legal) and recreational use (made illegal by Alaska voters in 1990).
- **Access:** Law enforcement must have access to information in the state registry while in the course of a criminal investigation or prosecution. The MMA unreasonably limits access only to those occasions when an officer has "stopped or arrested" a person claiming a medical use, and wishes to verify registration.
- **Possession Limits:** The MMA allows possession of unlimited amounts of marijuana if it can be "medically justified," without defining what that means. HB 213 establishes firm possession limits of one ounce in usable form and six plants.
- **Display Registry ID Card:** HB 213 requires all patients & primary caregivers to be issued a state ID card, just as we issue permits to Alaskans who qualify to carry concealed weapons. If a police officer questions a patient or primary caregiver about the medical use of marijuana, the person must display a registry card.
- **Limitations on Primary Caregivers:** HB 213 establishes wise precautions to prevent abuse. Each patient can have only ONE primary caregiver, and each primary caregiver can care for only ONE patient (with limited exceptions). A person who has violated drug laws of Alaska or another state cannot be a primary caregiver. A person who is on probation or parole cannot be a primary caregiver.

In addition to the above changes requested by DPS, HB 213 makes the following changes:

- **Consider other available treatments:** Requires physicians recommending marijuana to explore "other approved medications and treatments that might provide relief." This change is consistent with the recommendations of the federal Institute of Medicine study on medical marijuana, released last month.
- **Closes loopholes:** The MMA contains numerous drafting flaws, such as using the word "section" where "chapter" is more appropriate. If left uncorrected, these errors create gaping loopholes which, contrary to the initiative sponsor's intent, will allow marijuana to be smoked in public places, on school grounds, on a school bus, in state prisons, and at the workplace.



Health, Education, and Social Services Committee  
Alaska State Legislature  
House of Representatives

MEMORANLUM

April 30, 1999

To: Members, House HESS Committee

From: Representative Fred Dyson 

RE: HB 213 MEDICAL MARIJUANA LEGISLATION

I commend to your attention the attached letter from Alaska business leaders supporting SB 94 and HB 213.

The following individuals are signatories to the letter:

Matthew Fagnani, Worksafe, Inc. & President-elect, AK Support Industry Alliance  
Bob Tallent, Doyon Universal Services  
Robert Dickson, Esq., Atkinson Conway  
Keith Burke, Natchiq, Inc..  
Greg Champion, InterAlaska Hotels, Inc. (dba Sheraton Alaska)  
Lowell Humphrey, Kanas Telecom, Inc.  
Maynard Tapp, Hawk Consultants  
Randy Ruedrich, Arctic E&P Advisors  
Bob Southall, Anchorage Hilton  
Bob Stinson, Conam Construction Company  
Basil Stewart, Arctic Controls, Inc.  
Scott Hawkins, Alaska Supply Chain Int., LLC  
Mick Brogan, Brogan & Associates  
Ray Latchem, Fairbanks Natural Gas  
John Rense, NANA Development Corporation  
Shaun Pfeiffer, Alaska Sales & Service  
Ann Robinson, Alaska Sales & Service



# WORKSAFE, Inc.

OCCUPATIONAL HEALTH & SAFETY


4/21/99

Dear House and Senate Legislators:

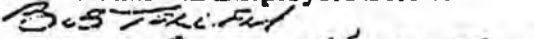
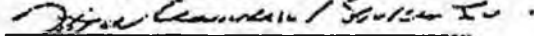
We are writing in support of CS for Senate Bill 94, sponsored by Senator Leman, relating to medical use of marijuana. As employers in Alaska, we are concerned about the potential of having an employee in the workplace under the influence of marijuana. For the past decade, great strides has been made in workplace safety to the benefit of both the employee and employer. Research has shown that marijuana impairs coordination and judgment, which can contribute to the cause of accidents.

The Alaska Statute approved by voters does not differentiate between on the job and off the job use of marijuana. Research has shown that the use of marijuana even off-the-job has been found to have a long term physical and mental residual effects on workplace performance. We encourage the Alaska Legislature to do what is in its power to assist us in continuing to provide a safe work environment for our employees and the public we serve.

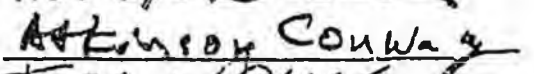
Sincerely,

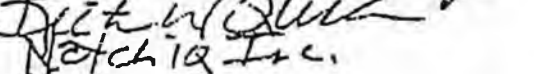
  
Matthew Fagman, President

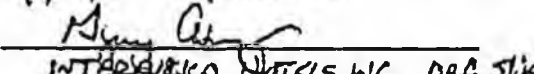
Other Alaskan Employers Below:

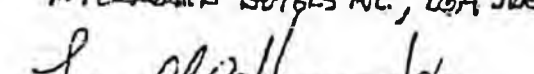
  


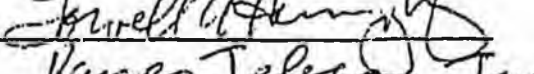
  
Robert DeLeon

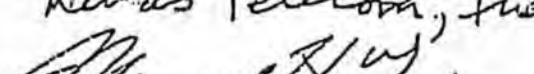
  
Atkinson Conway

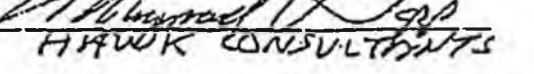
  
Dick W. Quinn

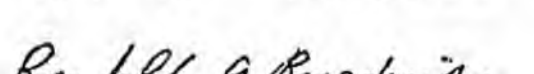
  
Mary Ann

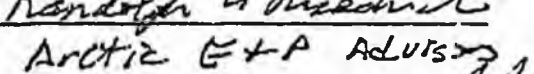
  
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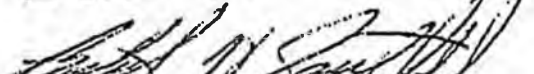
  
Lowell Humphrey

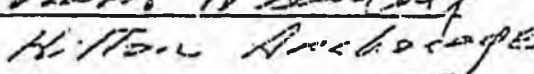
  
Kenas Telecom, Inc.

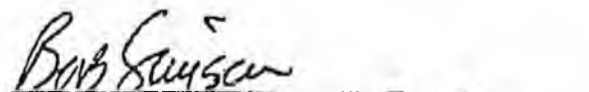
  
HOWARD H. HAYS

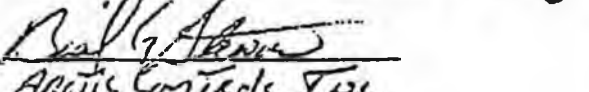
  
HAWK CONSULTANTS

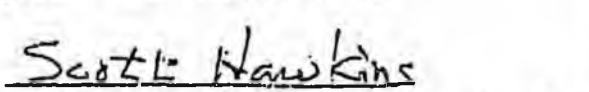
  
Randolph A. Ruedrich

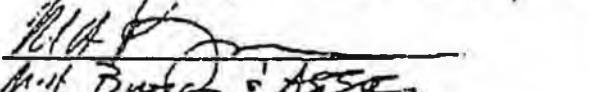
  
ARCTIC EPA ADVISORS


  
HILLMAN ARCHEOLOGY

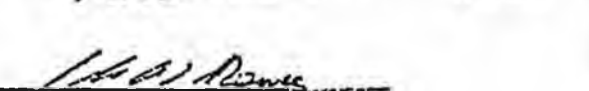
  
BOB GANSON  
CONCRETE CONSTRUCTION COMPANY

  
ARCTIC CONTROLS, INC.

  
SCOTT E. HAWKINS  
AK SUPPLY CHAIN INT., LLC


  
HILL BUDGET ASSOC.

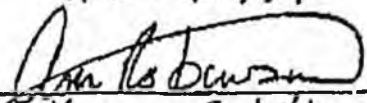
  
FAIRBANKS NATURAL GAS

  
NANA DEVELOPMENT

(continued)

- Other Alaskan Employers Below:

  
Asst. Gen. Mgr Alaska Sales + Svc

  
Human Relations Alaska Sales + Svc

\_\_\_\_\_  
\_\_\_\_\_

# Sectional Analysis – Committee Substitute for HB 213

## **“An Act relating to the medical use of marijuana; and providing for an effective date.”**

The following is a sectional analysis of Committee Substitute for House Bill 213 (1-LS0892\G), introduced on April 27, 1999. CSHB 213 proposes several amendments to AS 17.37.010 – 17.37.070, the “Medical Uses of Marijuana for Persons Suffering from Debilitating Medical Conditions Act,” approved by voters as “Ballot Measure No. 8” in November 1998.

This analysis addresses substantive changes only. CSHB 213 also incorporates dozens of minor changes affecting the style, grammar, and sentence structure of the new marijuana law. These alterations are designed to add clarity and bring the initiative language into conformity with the drafting style of Alaska statutes. Unless a proposed amendment involves a substantive change to the law, it will not be addressed in this document. CSHB 213 (1-LS0892\G) mirrors SSSB 94(1-LS0524\K)

In the interest of brevity, the statute created by Ballot Measure No. 8 will hereinafter be referred to as the “**Medical Marijuana Act**” or simply “**MMA**.”

### **Section 1**

This establishes a new section under Title 11 (Criminal Statutes), Chapter 71 (Controlled Substances). It provides that a defendant charged with violating Alaska’s controlled substance law may utilize as an “affirmative defense” the fact that the defendant is a patient or a caregiver permitted to use or possess marijuana under the terms of the Medical Marijuana Act.

This affirmative defense provision replaces the broad-based immunity language now found in Sec. 17.37.030(a)-(b) of the Medical Marijuana Act (*see page 8, lines 15-31 & page 9, lines 1-5*). It also replaces the broad “exception clause” that MMA added to the state’s controlled substances law at AS 11.71.190(b), i.e., “Marijuana is a schedule VIA controlled substance *except for marijuana possessed for medical purposes under AS 17.37.*” The language emphasized in italics is deleted in Section 2 of CSHB 213 (*see page 2, lines 23-24*).

The affirmative defense requirement proposed in CSHB 213 closely follows the model of state law relating to concealed weapons at AS 11.61.220(b). That statute provides that a person who “knowingly possesses a deadly weapon... that is concealed on the person” is guilty of a Class B misdemeanor. However, a person charged with this offense may invoke as an “affirmative defense” the fact that he or she is “the holder of a valid permit to carry a concealed handgun.”

Under state law at Sec. 11.81.900(b)(1), the term “affirmative defense” means that “some evidence must be admitted which places in issue the defense” and that “the defendant has the burden of establishing the defense by a preponderance of the evidence.” This is appropriate in circumstances where the defendant has special custody of, or access to information (e.g., a registration card,

written medical diagnosis, etc.), that would clearly demonstrate to law enforcement officials that the person is protected by a statutory exception.

Some have criticized the “affirmative defense” approach in CSHB 213 on the grounds that it places the burden of proof on the defendant rather than law enforcement. However, this is consistent with how Alaska law is applied to all other cases involving drugs on the controlled substance list, whether the substance is legal to prescribe or not. The burden of proof in all cases involving controlled substances is set out clearly in AS 11.71.350, which has been law since 1982: “It is not necessary for the state to negate an exemption or exception provided for in this chapter in a complaint, information, indictment, or other pleading or at a trial, hearing, or other proceeding under this chapter or AS 17.30. *The defendant has the burden of proving by a preponderance of the evidence any exemption or exception claimed by the defendant*” (emphasis added).

Law enforcement officials and gun owners have stated that the “affirmative defense” structure used in Alaska’s concealed-carry permit law works very well because it removes any ambiguity about who is allowed to carry a concealed weapon. In similar fashion, CSHB 213 will remove any ambiguity about who is entitled to use marijuana. It establishes what the U.S. Supreme Court has called the “bright line” that will help police distinguish between legitimate and illegitimate users of marijuana. It will help protect medical marijuana patients from being victims of mistaken arrest, and it will likewise allow the state to continue enforcing the state law that prohibits recreational use of marijuana. Alaskans voted to recriminalize possession of marijuana when they approved Ballot Measure No. 2 in 1990.

The affirmative defense provision in CSHB 213 contains appropriate safeguards to ensure marijuana will be legally used only for valid medical reasons and not for “recreational” use. Under Alaska’s existing controlled substance law, a person can be charged with the following marijuana-related offenses:

- 1) manufacture
- 2) delivery
- 3) possession
- 4) possession with intent to manufacture or deliver
- 5) use
- 6) display

For any of the six charges referenced above, CSHB 213 requires a person to meet all of the following requirements to establish a valid affirmative defense:

- 1) Person must be a patient, primary caregiver for a patient, or alternative caregiver for a patient.
- 2) The patient must be currently registered with the Department of Health & Social Services as a person entitled to use marijuana to address a debilitating medical condition.
- 3) The entire amount of marijuana in question must have been intended for medical use by the patient in accordance with a physician's recommendation as described in AS 17.37.010(c) (see page 3, lines 28-31 and page 4, lines 1-9).

- 4) The person's use of marijuana must comply with all requirements of AS 17.37, the Medical Marijuana Act. Among these requirements: prohibition on using marijuana in a public place; prohibition on using marijuana in a manner that endangers the health or safety of any person; prohibition on selling or distributing marijuana to any person other than an exchange between the patient and his or her primary caregiver; and possession limits of one ounce of marijuana in usable form and six plants (*see page 10, lines 21-31 & page 11, lines 1-13*).
- 5) If the defendant is a primary caregiver or alternative caregiver for a patient, the person must be in physical possession of the caregiver registry identification card issued by DHSS.

Section 1 of CSHB 213 concludes with a series of definitional references (*see page 2, lines 15-21*). Some of the definitions are changed slightly from those used in the Medical Marijuana Act. The changes are discussed in Section 7 of this analysis.

## Section 2

As described earlier in this analysis, Section 2 of CSHB 213 eliminates the broad exception clause the Medical Marijuana Act tacked on to the state's Controlled Substances Act: "Marijuana is a schedule VIA controlled substance [EXCEPT FOR MARIJUANA POSSESSED FOR MEDICAL PURPOSES UNDER AS 17.37.]. Thus, CSHB 213 restores medical marijuana to the list of controlled substances.

It is not necessary or even wise to remove medical marijuana from Alaska's list of controlled substances – which includes other medications that are available for prescription by doctors. Our law should recognize that marijuana, like morphine or any other prescription drug, is a controlled substance, regardless of how it is used. Indeed, one of the duties of the state's Controlled Substances Advisory Committee is to "recommend regulations... to prevent excessive prescription of controlled substances *and the diversion of prescription drugs into illicit channels*" (emphasis added) (*see AS 11.71.110*).

By completely deleting medical marijuana from Alaska's list of controlled substances, the new Medical Marijuana Act has effectively removed this substance from the reach of any legal or regulatory authority under the Controlled Substances Act (Title 11, Chapter 71). At least for this portion of state law, "medical marijuana" now has no more legal significance than a can of soda, a stick of chewing gum, or a jar of peanut butter. It is difficult to fathom how this serves a public health interest.

## Section 3

This section of CSHB 213 proposes several amendments to AS 17.37.010, which establishes a registry under DHSS of patients entitled to use marijuana.

- 1) To be listed on the registry, a patient must provide the department with a signed statement from his or her physician stating that the patient has been diagnosed with a debilitating medical condition, specifying the nature of the patient's symptoms, and concluding that the patient might benefit from the medical use of marijuana. In the

statement, the doctor must certify that he or she personally examined the patient in the context of a "bona-fide physician-patient relationship."

- 2) The physician's statement described above in (1) must also include a statement that the physician has "*considered other approved medications and treatments that might provide relief, that are reasonably available to the patient, and that can be tolerated by the patient, and that the physician has concluded that the patient might benefit from the medical use of marijuana.*" This additional requirement, not found in the original MMA, establishes a level of accountability from physicians who recommend use of marijuana. This higher level of accountability is prudent given the following facts related to the medical use of marijuana:

- A) A recent report from the National Academy of Sciences' Institute of Medicine recommended that short-term marijuana use by certain patients could be accepted only if the "**failure of all approved medications to provide relief has been documented.**" (*See Recommendation #6 of the Institute of Medicine Report, "Marijuana & Medicine: Assessing the Science Base," published by National Academy Press, Washington, D.C., 1999*).

This requirement was deemed prudent by the Institute of Medicine because of the harmful effects of smoking marijuana. As noted in the Institute report, "Although marijuana smoke delivers THC and other cannabinoids to the body, it also delivers harmful substances, including most of those found in tobacco smoke. In addition, plants contain a variable mixture of biologically-active compounds and cannot be expected to provide a precisely defined drug effect. For these reasons, the report concludes that the future of cannabinoid drugs lies not in smoked marijuana..." In a separate section devoted to the "physiological risks" of marijuana use, the Institute of Medicine noted: "Marijuana smoking is associated with abnormalities of cells lining the human respiratory tract. Marijuana smoke, like tobacco smoke, is associated with increased risk of cancer, lung damage, and poor pregnancy outcomes... Numerous studies suggest that marijuana smoke is an important risk factor in the development of respiratory disease."

- B) The principle authors of the Institute of Medicine report reiterated their findings in an editorial published in *The Standard-Times* (Massachusetts) on April 13, 1999: "In deciding whether marijuana should be smoked as medicine, society must weigh the reality of this crude drug-delivery system against the benefits it might bestow. Chronic smoking of marijuana increases a person's chances of developing cancer, lung damage, and problems with pregnancies, including low birth weight. Therefore, it is simply not an acceptable long-term option. Smoking should be allowed only for short-term use among patients with debilitating symptoms, or who are terminally ill *and do not respond well to approved medications.*" (emphasis added). The principle authors of the report (and the editorial) are Dr. John A. Benson, Dean and Professor of Medicine Emeritus at the Oregon Health Sciences University School of Medicine in

Portland; and Dr. Stanley J. Watson, Jr., Co-Director and Research Scientist at the Mental Health Research Institute, University of Michigan, Ann Arbor.

- C) The federal government classifies marijuana as a "Schedule I" drug: dangerous, addictive, and without medical benefit. Under federal law, it cannot be legally prescribed, grown, or sold – regardless of what Alaska statutes say. A doctor who recommends use of marijuana is effectively advising the patient to engage in activity that is prohibited by law. Out of concern for the welfare of the patient, it is reasonable to require that other legal treatments be considered first. Nothing in state law can protect a patient (or a physician) from enforcement action by the federal Drug Enforcement Administration.
- D) The main psychoactive ingredient in marijuana, Delta-9-tetrahydrocannabinol (THC), is already available in synthetic form in the drug Marinol, which can be legally prescribed. Unlike marijuana, it is "pure" and can be administered in precise, controlled doses. As the American Medical Association has stated, "Marijuana doesn't fit neatly into traditional protocols because the dosage is inexact, the quality and strength of marijuana varies, and each puff contains more than 400 chemicals, not just a single agent to be isolated." (Source: editorial of American Medical News, April 7, 1997)
- E) The American Medical Association has recommended that marijuana remain classified as a prohibited, Schedule I drug (i.e., illegal to prescribe) until further research can demonstrate whether the substance has any medical utility: "What patients and physicians deserve now is some much-needed clinical research that will decide the issue of whether medical marijuana is even worth talking about... Certainly medical marijuana has a loyal following of patients. As the ballot measures indicate, it has also captured the imagination of the public at large. Unfortunately, unproven therapies often do." (Source: Report 10 of the Council on Scientific Affairs, American Medical Association & editorial of American Medical News, April 7, 1997)
- F) The American Cancer Society has questioned the efficacy of medical marijuana: "Marijuana has also been suggested as a treatment for pain, loss of appetite and depression associated with cancer. To date, there is no scientific evidence that marijuana is as useful as currently available medications in controlling these symptoms. Claims that marijuana smoking can improve some patients' general sense of well-being cannot be readily verified by scientific research. Some states have recently passed legislation intended to promote access to marijuana for patients with cancer and other serious diseases. Evaluation of any medication involves weighing its benefits against adverse effects and other disadvantages. As a medication for controlling nausea and vomiting associated with cancer chemotherapy, smoked marijuana appears to offer little if any benefit over legally available medications (including dronabinol)." (Source: statement posted on the American Cancer Society web page, available at [www.cancer.org/murphy/week2.html](http://www.cancer.org/murphy/week2.html))

- G) Marijuana is a dangerous substance and it is the most commonly abused illegal drug in the United States: "Today's street version [of marijuana], however, is 10 times more potent than what was available a decade or two ago. And it is that many times more dangerous. Marijuana... is far from harmless. It contains more harmful chemicals than cigarettes. The chemical ingredients can stay in the body for up to a month after the smoking of a single joint (marijuana cigarette). Marijuana affects every tissue in the body. It slows down brain activity and impairs concentration, depth perception, reaction time, and the ability to evaluate situations and outcomes. It can damage short-term memory and bring on a totally 'I don't care' attitude... Meanwhile, the smoke from one marijuana joint causes more lung damage than that from a whole pack of cigarettes. Over time the chemicals and smoke can cause lung cancer and emphysema. The body's ability to fight infection may be lowered because marijuana often lowers the white blood cell count." (Source: "The Perils of Pot," by Dr. Richard Heyman, Chairman of the Committee on Substance Abuse of the American Academy of Pediatrics, published in the American Medical Association book "Teen Talk.")
- 3) The registry must include not only the patient, but also the patient's primary caregiver and alternative caregiver, if either is designated. Only one primary caregiver and alternative caregiver can be listed for each patient. To be listed as a caregiver, a person must submit a sworn statement to DHSS stating that the applicant is at least 21 years of age, not currently on probation or parole, and has never been convicted of a felony violation of the drug laws of Alaska or another state. The patient must include the following information about the primary and alternative caregivers in his or her application: name, address, date of birth, Alaska drivers license or identification card number. A person can be a caregiver for only one patient at a time, except in circumstances in which the person is caring for two or more patients who reside in the same household as the caregiver and these patients are related to the caregiver by at least the fourth degree of kinship by blood or marriage.
- 4) If the patient is a minor, the registry application must be filed by the parent or guardian. The application must include a statement by the minor's parent or guardian that the physician has explained the risks and benefits of medical use of marijuana and that the parent or guardian consents to serve as the primary caregiver for the patient. CSHB 213 further requires that the parent or guardian "*control the acquisition, possession, dosage, and frequency of use of marijuana by the patient.*"
- 5) CSHB 213 deletes much of the sweeping confidentiality language at AS 17.37.010(b) because it unreasonably restricts the ability of law enforcement to access registry information for official purposes (*see page 3, lines 13-24*). In its place, CSHB 213 stipulates that registry information is confidential and not considered a public record under AS 09.25.100 – 09.25.220 (the public records statute under the Code of Civil Procedure). However, law enforcement personnel are permitted to access registry information while "in the course of a criminal investigation." This specific type of access is not currently permitted under MMA.

- 6) DHSS is permitted to deny a registration card to a patient who "is not... qualified to be registered" (*see page 5, lines 15-16*). This authority is somewhat broader than what is currently permitted under the Medical Marijuana Act, which authorizes a denial only if the patient (1) did not provide the required information; or (2) provided information that was falsified.
- 7) If a patient's application designates a caregiver and DHSS determines that the caregiver does not meet the statutory requirements to be listed, the department shall proceed to review the patient's application as if there were no designation of a caregiver. The patient may apply to have a new primary caregiver or alternate caregiver listed at any time.
- 8) When an application is approved, the department will issue a registration card for the patient and a duplicate card for the patient's primary caregiver, if one has been listed. The duplicate card will be clearly identified as the caregiver registry identification card.
- 9) The Medical Marijuana Act states that if DHSS fails to act on an application within 35 days of receipt, then the application is considered to have been automatically approved. CSHB 213 retains this provision, but adds a stipulation that if the department subsequently registers or denies registration to a patient or caregiver, this action revokes or supersedes the previous "automatic" approval.
- 10) A patient or primary caregiver who is questioned by a law enforcement officer regarding the medical use of marijuana must present proper identification to the official, and also one of the following documents: (1) the person's registry identification card; or (2) a copy of an application that has been pending before the department for more than 35 days without being approved or denied, along with proof of the date of delivery to the department.
- 11) The MMA states that a denial of a registry identification card is considered a final agency action subject to judicial review, and that only the patient has the standing to contest the denial. CSHB 213 amends this language to state that, in addition to a denial, the revocation of a registry identification card or the removal of a person from the registry (e.g., a primary caregiver) also constitutes a final action subject to judicial review. In addition to the patient, a parent or guardian of a patient who is a minor also has standing to contest the agency action.
- 12) The MMA requires a patient to notify the department within 10 days of any changes in the patient's name, address, physician, or primary caregiver. CSHB 213 expands this 10-day notice requirement to include any changes in name or address of the primary caregiver.
- 13) The MMA requires the patient to return his or her registry identification card within 24 hours of receiving a physician's diagnosis that the patient no longer has a debilitating condition. CSHB 213 expands this requirement to also require the primary caregiver to return his or her registration card within 24 hours of the new diagnosis.

- 14) CSHB 213 adds a new provision in subsection (m) designed to prevent abuse of the registration system: "A copy of a registry identification card is not valid. A registry identification card is not valid if the card has been altered, mutilated in a way that impairs its legibility, or laminated." (*see page 7, lines 25-27*)
- 15) CSHB 213 adds a new subsection (n) permitting DHSS to revoke a patient's registration if the department determines that the patient has violated a provision of AS 17.37 (the Medical Marijuana Act) or AS 11.71 (Controlled Substances Act). (*see page 7, lines 28-29*)
- 16) CSHB 213 also adds a new subsection (o) allowing DHSS to remove a primary or alternate caregiver from the state registry if it is determined that the caregiver is not qualified to be listed or has violated a provision of AS 17.37 (Medical Marijuana Act) or AS 11.71 (Controlled Substances Act). (*see page 7, lines 30-31 & page 8, lines 1-2*)

#### **Section 4**

This section of CSHB 213 proposes several amendments to Sec. 17.37.030 of the MMA, entitled "Privileged medical use of marijuana."

- 1) In subsection (a), all material from the original MMA is deleted and replaced with new language (*see page 8, lines 12-30*). The language proposed for deletion is the most problematic in the Medical Marijuana Act, as it grants sweeping immunity to both patients and primary caregivers claiming a medical need for marijuana, even if the patient and primary caregiver are not registered with DHSS. Along with the MMA's removal of "medical marijuana" from Alaska's list of controlled substances (*see page 2, lines 23-24*), this provision effectively places the burden on law enforcement to prove that a person being questioned about marijuana use is NOT using it for a medical purpose. This shifting of the burden of proof will likely cause police to not bother making arrests in many situations because of the ambiguities in the law. This problematic language is replaced by the new "affirmative defense" provision described in Section 1 of this analysis. The new subsection (a) reads as follows: "*A patient, primary caregiver, or alternate caregiver registered with the department under this chapter has an affirmative defense to a criminal prosecution related to marijuana to the extent provided in AS 11.71.090.*"
- 2) The next subsection (b) begins on page 8, line 31. In its original form, as part of the MMA, this subsection grants sweeping immunity from prosecution related to the medical use of marijuana, though at least this subsection limits the protection to those who are in "lawful possession of a registry identification card." Similar to the change in subsection (a), CSHB 213 deletes the general immunity language in this subsection because protection for medical marijuana use is covered by the affirmative defense provision in Section 1. However, the revised subsection retains the immunity language insofar as it relates to the specific act of applying to be listed on the state registry: "*Except as otherwise provided by law, a person is not subject to arrest, prosecution, or penalty in any manner for applying to have the person's name placed on the confidential registry maintained by the department under AS 17.37.010.*"

- 3) The next subsection (c) in the Medical Marijuana Act (beginning on page 9, line 6) provides that a physician who advises a patient regarding the medical use of marijuana shall not be subject to prosecution or other disciplinary action for providing such advice, provided certain conditions are met. CSHB 213 adds a new condition to those already listed – specifically, that the physician’s advice must be based on a contemporaneous assessment of *“other approved medications and treatments that might provide relief and that are reasonably available to the patient and that can be tolerated by the patient.”*
- 4) The next subsection (d) of MMA (beginning on page 9, line 28) contains an exclusionary clause stating that a person is not “entitled to the protection of this section” (i.e., AS 17.37.030) for the non-medical use of marijuana. CSHB 213 expands the scope of this exclusionary clause to state that no person is “entitled to the protection of this chapter” (i.e., AS 17.37 in its entirety) for the non-medical use of marijuana. In other words, a person’s use of marijuana for non-medical purposes makes that person ineligible for the protections in the entire Medical Marijuana Act, not merely the protections of one section.
- 5) CSHB 213 deletes the next subsection (e) of the MMA (*see page 10, lines 2-19*). This subsection contains cumbersome language addressing issues of forfeiture of property arising from seizures of medical marijuana. The deletion of this language was the result of an amendment adopted in the HESS Committee at the recommendation of the Department of Law and Department of Public Safety. Alaska law already includes comprehensive guidelines for seizures and forfeiture of property in the area of controlled substances. These procedures are set out in AS 17.30.100 – 17.37.126, and they apply to all cases involving seizure of drugs on Alaska’s list of controlled substances. There is no need to have a separate seizure and forfeiture law that applies exclusively to marijuana used for medical purposes. In addition, the provisions of CSHB 213 requiring registration and the carrying of a registry ID card make it extremely unlikely there will be any cases in which law enforcement officials mistakenly seize marijuana and other paraphernalia from a patient who is legally entitled to possess or use it.

## Section 5

In this section, CSHB 213 proposes several amendments to Sec. 17.37.040 of the Medical Marijuana Act, entitled “Restrictions on medical use of marijuana” (*see page 10, lines 21-31; page 11, lines 1-31; & page 12, line 1*). Unfortunately, as the analysis below demonstrates, the “restrictions” in MMA are illusory:

- 1) The existing Medical Marijuana Act, now in force, provides in subsection (a) that a patient “in lawful possession of a registry identification card” shall not:
  - A) use medical marijuana “in a way that endangers the health or well-being of any person.”
  - B) use medical marijuana “in plain view of, or in a place open to, the general public.”

- C) knowingly sell or distribute marijuana to any person not in lawful possession of a registry identification card, or eligible to possess such a card.

Curiously, the limitations above do not apply to:

- A) a primary caregiver; or
- B) a patient who is not in "lawful possession of a registry identification card."

Therefore, under the terms of MMA, a primary caregiver and a patient who qualifies for medical use of marijuana, *but who refuses to participate in the optional registration process*, is not prohibited by this section from: (1) using marijuana in a public place; (2) using marijuana in a way that endangers the health and safety of another person; or (3) selling/distributing marijuana to persons who are not in lawful possession of a registry identification card or eligible for such a card.

CSHB 213 corrects these problems: it applies the restrictions to both patients and primary caregivers, and the restrictions apply regardless of whether one has a registration card or not. Also, to help the medical marijuana law work better for patients and caregivers, CSHB 213 adds an exception to the public use prohibition, stating that it is not a violation to carry less than one ounce of marijuana in a public place, provided the drug is kept in a closed container, carried on the person, is not visible to anyone other than the patient or primary caregiver, and the possession is limited to what is necessary to transport the marijuana to a place where the patient and caregiver can lawfully use the substance.

CSHB 213 also adds new requirements to subsection (a) to prohibit the sale or distribution of marijuana to any person, except that marijuana can be transferred between the patient and primary caregiver. It also sets possession limits of one ounce in usable form and six plants, of which no more than three can be mature and flowering and capable of producing usable marijuana at any one time (*see page 11, lines 7-13*).

- 2) Subsection (d) of MMA (beginning on page 11, line 25) states that "nothing in this section shall require any accommodation of any medical use of marijuana" in a place of employment, a correctional facility, school bus, etc. Once again, the MMA employs the word "section" instead of the word "chapter" – which effectively renders the restrictions meaningless and creates a gaping loophole. CSHB 213 corrects this problem by deleting "section" and inserting "chapter" in its place. In addition, CSHB 213 adds a new provision stating that marijuana use need not be accommodated in a "medical facility, or facility monitored by the department of the Dept. of Administration" (e.g., juvenile detention facility, Pioneer Home, etc.). These terms are defined on page 13, lines 14-31 & page 14, lines 1-4.

## Section 6

This section of CSHB 213 amends Sec. 17.37.060 of the marijuana initiative, entitled "Addition of debilitating medical conditions."

The Medical Marijuana Act requires DHSS to adopt regulations governing the manner in which new debilitating medical conditions eligible for treatment with marijuana can be added "to the list provided in this section" (*see page 12, lines 3-7*). However, this statement is meaningless because there is no list of medical conditions in "this section," which is Sec. 17.37.060. Presumably, the drafters of MMA meant to refer to the list provided in the subsequent section, 17.37.070. To provide clarity, CSHB 213 amends this section to refer specifically to the list of debilitating conditions defined in Sec. 17.37.070 (*see page 12, lines 27-31 & page 13, lines 1-11*).

### Section 7

This section of CSHB 213 makes several changes to the definitions section of the Medical Marijuana Act (AS 17.37.070).

- 1) CSHB 213 adds a new definition of "**alternate caregiver**," as the original MMA does not provide for alternate caregivers. The alternate caregiver, when in possession of the caregiver ID card, is able to carry out the responsibilities of the primary caregiver when that person is unable to fulfill them (such as during travel out of state).
- 2) CSHB 213 adds a definition of the term "**bona fide physician-patient relationship**." Although this term is used in the MMA at AS 17.37.030(c)(2), the drafters of the initiative neglected to include a definition. CSHB 213 defines the term as a relationship in which "*the physician obtained a patient history, performed an in-person physical examination of the patient, and documented written findings, diagnoses, recommendations, and prescriptions in written patient medical records maintained by the physician.*"
- 3) The definition of "**correctional facility**" in MMA is deleted in favor of a more comprehensive definition already in Alaska law under Title 33, Chapter 30, entitled "Prison Facilities and Prisoners" (see Section 901): "*a prison, jail, camp, farm, half-way house, group home, or other placement designated by the commissioner for the custody, care, and discipline of prisoners.*"
- 4) CSHB 213 includes a new definition of "**facility monitored by the department or the Department of Administration**." This definition is necessary because CSHB 213 states at AS 17.37.040(d)(2) that the medical use of marijuana is not required to be accommodated at any of these facilities (*see page 11, lines 28-29*). The definition includes any "institution, building, office, or home" operated, funded, inspected, licensed, designated, or under contract with DHSS or the Department of Administration for the care of juveniles, the elderly, and the mentally ill (*see page 13, lines 14-31*).
- 5) A new definition of "**medical facility**" is included, for the same reason identified in (4) above – namely, that CSHB 213 requires no accommodation for the use of medical marijuana in these facilities (*page 11, line 28*). Medical facility is defined as an "*institution, building, office, or home providing medical services, and includes a*

*hospital, clinic, physician's office, or health facility as defined in AS 47.07.900, and a facility providing hospice care or rehabilitative services, as those terms are defined in AS 47.07.900."*

- 6) **"Medical use"** of marijuana is redefined for greater clarity. The existing definition in the Medical Marijuana Act defines "medical use" as marijuana used, manufactured, etc., to "address the symptoms or effects of a debilitating medical condition." CSHB 213 defines medical use in more concise terms, as marijuana used to *"alleviate a debilitating medical condition."*
- 7) CSHB 213 changes the definition of **"primary caregiver"** to add greater clarity and prevent abuse: *"primary caregiver means a person listed as a primary caregiver under AS 17.37.010 and in physical possession of a caregiver registry identification card; 'primary caregiver' also includes an alternate caregiver when the alternate caregiver is in physical possession of the caregiver registry identification card."*
- 8) The definition of **"prisoner"** contained in MMA is deleted by CSHB 213. The need for this definition is not apparent, since the term is not employed anywhere in the main body of the initiative language. The only reference to the word "prisoner" is found in the definitions section, under "correctional facility." Since CSHB 213 proposes to use the standard definition of "correctional facility" contained in state statute at AS 33.30.901(4), there appears to be no need for a unique, tailor-made definition of prisoner. State law already defines the term "prisoner" at AS 33.30.901(12).
- 9) CSHB 213 deletes the definition of **"registry identification card"** because it is superfluous. The meaning of this term is self-evident in CSHB 213 at Sec. 3, AS 17.37.010(e) (*see page 5, lines 26-31 & page 6, lines 1-12*).
- 10) CSHB 213 deletes the definition of **"written documentation"** as the meaning of this term is self-evident in Sections 1 & 3 (*see page 3, lines 28-31; page 4, lines 1-9*).

## Section 8

This section of CSHB 213 deletes two sections of the Medical Marijuana Act – AS 17.37.020 and 17.37.050.

- 1) Section 17.37.020 of MMA, entitled "Medical Use of Marijuana," establishes limits on the amount of marijuana a patient can "use" for medical purposes – no more than one ounce in usable form, and no more than six marijuana plants, with only three mature and flowering. In this context, it is odd that the MMA employs the term "use" rather than "possess." If the language is taken literally, it appears a patient could "possess" an unlimited quantity of marijuana, as long as the patient is currently "using" no more than one ounce in usable form. In fact, the next paragraph of this section [AS 17.37.020(b)] allows even these ill-defined limits to be exceeded if the patient or primary caregiver can prove by a preponderance of evidence that "any greater amount was medically justified to address the patient's debilitating medical condition." CSHB 213 deletes this entire section of MMA, and restates the limits on possession of marijuana in Section 5 (*see*

*page 11, lines 10-13*). These limits are restated strictly in terms of "possession," not "use."

- 2) Section 17.37.050 of the marijuana initiative is entitled, "Medical use of marijuana by a minor." It states requirements that must be met if a minor is to use medical marijuana. CSHB 213 deletes this entire section and instead addresses the use of marijuana by minors in Section 3 of the bill (*see page 3, lines 25-27; page 4, lines 21-25; and page 7, lines 9-11*).

## **Section 9**

This section of CSHB 213 provides for an immediate effective date, in accordance with AS 01.10.070(c).

**Prepared by Mike Pauley, Staff Aide to Senator Loren Leman (465-3841)  
Last updated: May 9, 1999**



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## MEMORANDUM

**TO:** MEMBERS, SENATE HESS COMMITTEE

**FROM:** SENATOR LOREN LEMAN *Leman*

**DATE:** APRIL 26, 1999

**RE:** SB 94 – MEDICAL MARIJUANA LEGISLATION

I commend to your attention the attached letter from Alaska business leaders supporting SB 94, legislation I have introduced to improve the medical marijuana law.

The following individuals are signatories to the letter:

Matthew Fagnani, Worksafe, Inc. & President-elect, AK Support Industry Alliance  
Bob Tallent, Doyon Universal Services  
Robert Dickson, Esq., Atkinson Conway  
Keith Burke, Natchiq, Inc..  
Greg Champion, InterAlaska Hotels, Inc. (dba Sheraton Alaska)  
Lowell Humphrey, Kanas Telecom, Inc.  
Maynard Tapp, Hawk Consultants  
Randy Ruedrich, Arctic E&P Advisors  
Bob Southall, Anchorage Hilton  
Bob Stinson, Conam Construction Company  
Basil Stewart, Arctic Controls, Inc.  
Scott Hawkins, Alaska Supply Chain Int., LLC  
Mick Brogan, Brogan & Associates  
Ray Latchem, Fairbanks Natural Gas  
John Rense, NANA Development Corporation  
Shaun Pfeiffer, Alaska Sales & Service  
Ann Robinson, Alaska Sales & Service



# WORKSAFE, Inc.

OCCUPATIONAL HEALTH & SAFETY


4/21/99

Dear House and Senate Legislators:

We are writing in support of CS for Senate Bill 94, sponsored by Senator Leman, relating to medical use of marijuana. As employers in Alaska, we are concerned about the potential of having an employee in the workplace under the influence of marijuana. For the past decade, great strides has been made in workplace safety to the benefit of both the employee and employer. Research has shown that marijuana impairs coordination and judgment, which can contribute to the cause of accidents.

The Alaska Statute approved by voters does not differentiate between on the job and off the job use of marijuana. Research has shown that the use of marijuana even off-the-job has been found to have a long term physical and mental residual effects on workplace performance. We encourage the Alaska Legislature to do what is in its power to assist us in continuing to provide a safe work environment for our employees and the public we serve.

Sincerely,

  
Matthew Fagan, President

Other Alaskan Employers Below:

Bob Taylor  
Taylor Construction Services Inc.

Robert DeLeon  
Atkinson Conway

Dick W. Quinn  
Notch 10 Inc.

Steve Allen  
INTERIORICA HOTELS INC., OSA SIKKENTON

Lowell A. Humphrey  
Kansas Telecom, Inc.

Alvin H. Hays  
HAWK CONSULTANTS

Randolph A. Reedman  
ARCTIC E+P ADVISORS

Scott W. Smith  
Hilton Anchorage

Bob Gynson  
CONAM CONSTRUCTION COMPANY

Paul G. Adams  
ARCTIC CONTRACTS, INC.

Scott Hawkins  
AK Supply Chain Int., LLC


Mark R. Jones  
Mark R. Jones & Assoc.

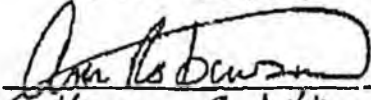
Paul J. ...  
Fairbanks National Bank

John A. ...  
NANA Development

(continued)

- Other Alaskan Employers Below:

  
ASST. GEN. MGR Alaska Sales + Svc \_\_\_\_\_

  
Human Relations Alaska Sales + Svc \_\_\_\_\_

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