

SB

74

SFIN

FILE

SB 74

was referred to the
Senate Finance
Committee

Hearing(s) were held

The bill did not move
from Committee

24-GS1054\Y
Luckhaupt
1/11/06

CS FOR SENATE BILL NO. 74(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act making findings relating to marijuana use and possession; relating to
2 marijuana and misconduct involving a controlled substance; and providing for an
3 effective date."

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

5 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 **PURPOSE.** The purpose of this Act is to protect the health and safety of persons in
8 this state and to provide legislative findings concerning this Act regarding marijuana and its
9 effects in this state.

10 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 **FINDINGS.** The type of marijuana available in the United States and Alaska today,
13 and the changes in the patterns of usage of the drug, particularly by young Alaskans, Alaska
14 Natives and those undergoing alcohol treatment, pose a threat to the public health and welfare

1 that justifies prohibiting possession in this state, even by adults at home. In this Act, the
2 legislature has considered its duty to implement the right to privacy in art. I, sec. 22,
3 Constitution of the State of Alaska, and its duty to promote the public health and welfare in
4 art. VII, sec. 4, Constitution of the State of Alaska. The legislature has also considered its
5 obligation to carry out the intent of the voters of Alaska in recriminalizing marijuana by ballot
6 initiative in 1990, and in defeating ballot initiatives to again decriminalize marijuana in 2000
7 and 2004. To assist the courts in considering these issues, the legislature further finds that

8 (1) the potency of marijuana has increased dramatically since the 1960s and
9 1970s; the national average amount of delta-9-tetrahydrocannabinol (THC), the main
10 psychoactive ingredient, was less than one percent then, but increased steadily in the 1980s
11 and 1990s, and by 2003 was six times higher, at 6.4 percent; marijuana grown and available in
12 Alaska is much more potent than the national average, and has been tested with THC levels
13 over 20 percent; the average potency of Alaska marijuana for the period 1993-2003 was over
14 10 percent and for 2003 was nearly 14 percent; Alaska marijuana today commands hundreds
15 of dollars per ounce on the illegal market and is often sold in smaller amounts within the price
16 range of teenagers; the increasing potency of marijuana corresponds to an increase in
17 substance abuse treatment admissions, particularly youth 12 - 17 years of age, and in the
18 number of persons seeking emergency medical care due to marijuana-related incidents;

19 (2) several hundred adults and children are admitted into treatment each year
20 in Alaska for marijuana abuse, with more than half being children under 18 years of age and
21 more than a third being Alaska Natives; pregnant women in Alaska use marijuana at a higher
22 rate than the national average and the percentage of pregnant Alaska Native women using
23 marijuana is more than double the national average and the average for non-Native Alaskan
24 women; the percentage of Alaska Native high school youth who have used marijuana is
25 significantly higher than among non-Native youth;

26 (3) there is evidence that many users become dependent on marijuana under
27 the clinical standards applied by the Diagnostic and Statistical Manual of Mental Disorders
28 IV; studies have shown that use of marijuana and withdrawal from marijuana affect some of
29 the same neurochemical processes as known addictive drugs; Marijuana Anonymous chapters
30 to treat marijuana addicts exist in a majority of states in the country. This is persuasive
31 evidence of marijuana's potential for users becoming dependent on it. Currently, one-third of

1 all persons in Alaska treated for drug and alcohol problems are treated for marijuana abuse;

2 (4) early exposure of young people to marijuana increases the likelihood of
3 lifelong health and social problems, makes it more likely that the person will later use more
4 potent illegal drugs, and is associated with depression and an increased risk of attempting
5 suicide;

6 (5) a high percentage of persons in treatment for alcohol abuse also abuse
7 marijuana, particularly among Alaska Natives; although the relationship between marijuana
8 and alcohol and other drugs is not fully understood, there is a correlative effect that makes it
9 more difficult to treat alcoholism when marijuana is also used;

10 (6) marijuana consists of hundreds of different chemicals and can affect
11 almost every organ and system in the body, including the lymph system, the heart, and the
12 lungs; THC binds to receptors in the brain that should otherwise bind to naturally occurring
13 brain chemicals; marijuana can affect memory, attention, judgment, and other cognitive
14 functions and can impair motor coordination, time perception, and balance; marijuana smoke
15 contains more carcinogenic hydrocarbons than tobacco smoke; marijuana often contains
16 bacteria or fungus that are dangerous to humans, and is harvested and sold without removing
17 pesticides and fungicides;

18 (7) a high percentage of persons arrested in this state, including adults and
19 juveniles who commit violent offenses, have marijuana in their system at the time of the
20 arrest: the percentage is particularly high for adults arrested for domestic violence who test
21 positive for marijuana at the time of the arrest;

22 (8) if a parent uses marijuana, their children are four to five times more likely
23 to become marijuana users; many high school students report that they have been able to get
24 marijuana at home or from a relative; criminal penalties for possession of marijuana in the
25 home will deter possession by adults and reduce its availability and accessibility to children;
26 studies have shown that criminal penalties for possession of marijuana are effective in
27 increasing the perception among teenagers of the risks of using the drug, thus reducing its use
28 by young people;

29 (9) in *Noy v. State*, 83 P.3d 538 (Alaska App. 2003), the Alaska court of
30 appeals allowed any person over 17 years of age to possess up to four ounces of marijuana in
31 their home; at the same time, the court held that possession of four ounces could legitimately

1 be prohibited even in the home because it was reasonable for the legislature to conclude in
2 1982 that possession of four ounces is indicative of an intent to sell; the street value of
3 marijuana today is between \$350 and \$550 per ounce; the legislature heard evidence that
4 possession of four ounces or more indicates an intent to distribute; and therefore this is the
5 appropriate amount to justify a felony offense; the Noy decision also led the same court in
6 Crocker v. State, 97 P.3d 93 (Alaska App. 2004) to invalidate search warrants for commercial
7 marijuana-growing and, in the words of the dissenting chief judge, make it "difficult for the
8 state to enforce legitimate laws prohibiting the sale and possession of marijuana."

9 * Sec. 3. AS 11.71.040(a) is amended to read:

10 (a) Except as authorized in AS 17.30, a person commits the crime of
11 misconduct involving a controlled substance in the fourth degree if the person

12 (1) manufactures or delivers any amount of a schedule IVA or VA
13 controlled substance or possesses any amount of a schedule IVA or VA controlled
14 substance with intent to manufacture or deliver;

15 (2) manufactures or delivers, or possesses with the intent to
16 manufacture or deliver, one or more preparations, compounds, mixtures, or substances
17 of an aggregate weight of one ounce or more containing a schedule VIA controlled
18 substance;

19 (3) possesses

20 (A) any amount of a schedule IA or IIA controlled substance;

21 (B) 25 or more tablets, ampules, or syrettes containing a
22 schedule IIIA or IVA controlled substance;

23 (C) one or more preparations, compounds, mixtures, or
24 substances of an aggregate weight of three grams or more containing a
25 schedule IIIA or IVA controlled substance;

26 (D) 50 or more tablets, ampules, or syrettes containing a
27 schedule VA controlled substance;

28 (E) one or more preparations, compounds, mixtures, or
29 substances of an aggregate weight of six grams or more containing a schedule
30 VA controlled substance;

31 (F) one or more preparations, compounds, mixtures, or

1 substances of an aggregate weight of four ounces [ONE POUND] or more
2 containing a schedule VIA controlled substance; or

3 (G) 25 or more plants of the genus cannabis;

4 (4) possesses a schedule IIIA, IVA, VA, or VIA controlled substance

5 (A) with reckless disregard that the possession occurs

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

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

8 or

9 (B) on a school bus;

10 (5) knowingly keeps or maintains any store, shop, warehouse,
11 dwelling, building, vehicle, boat, aircraft, or other structure or place that is used for
12 keeping or distributing controlled substances in violation of a felony offense under this
13 chapter or AS 17.30;

14 (6) makes, delivers, or possesses a punch, die, plate, stone, or other
15 thing that [WHICH] prints, imprints, or reproduces a trademark, trade name, or other
16 identifying mark, imprint, or device of another or any likeness of any of these upon a
17 drug, drug container, or labeling so as to render the drug a counterfeit substance;

18 (7) knowingly uses in the course of the manufacture or distribution of a
19 controlled substance a registration number that is fictitious, revoked, suspended, or
20 issued to another person;

21 (8) knowingly furnishes false or fraudulent information in or omits
22 material information from any application, report, record, or other document required
23 to be kept or filed under AS 17.30;

24 (9) obtains possession of a controlled substance by misrepresentation,
25 fraud, forgery, deception, or subterfuge; or

26 (10) affixes a false or forged label to a package or other container
27 containing any controlled substance.

28 * Sec. 4. AS 11.71.050(a) is amended to read:

29 (a) Except as authorized in AS 17.30, a person commits the crime of
30 misconduct involving a controlled substance in the fifth degree if the person

31 (1) manufactures or delivers, or possesses with the intent to

1 manufacture or deliver, one or more preparations, compounds, mixtures, or substances
2 of an aggregate weight of less than one [ONE-HALF] ounce [OR MORE] containing
3 a schedule VIA controlled substance;

4 (2) manufactures or delivers, or possesses with the intent to
5 manufacture or deliver, one or more preparations, compounds, mixtures, or substances
6 of an aggregate weight of less than one-half ounce containing a schedule VIA
7 controlled substance, for remuneration;

8 (3) possesses

9 (A) less than 25 tablets, ampules, or syrettes containing a
10 schedule IIIA or IVA controlled substance;

11 (B) one or more preparations, compounds, mixtures, or
12 substances of an aggregate weight of less than three grams containing a
13 schedule IIIA or IVA controlled substance;

14 (C) less than 50 tablets, ampules, or syrettes containing a
15 schedule VA controlled substance;

16 (D) one or more preparations, compounds, mixtures, or
17 substances of an aggregate weight of less than six grams containing a schedule
18 VA controlled substance; or

19 (E) one or more preparations, compounds, mixtures, or
20 substances of an aggregate weight of one ounce [ONE-HALF POUND] or
21 more containing a schedule VIA controlled substance; or

22 (4) fails to make, keep, or furnish any record, notification, order form,
23 statement, invoice, or information required under AS 17.30.

24 * Sec. 5. AS 11.71.060(a) is amended to read:

25 (a) Except as authorized in AS 17.30, a person commits the crime of
26 misconduct involving a controlled substance in the sixth degree if the person

27 (1) uses or displays any amount of a schedule VIA controlled
28 substance;

29 (2) [OR] possesses one or more preparations, compounds, mixtures, or
30 substances of an aggregate weight of less than one ounce [ONE-HALF POUND]
31 containing a schedule VIA controlled substance;

1 or

2 (3) [(2)] refuses entry into a premise for an inspection authorized under
3 AS 17.30.

4 * Sec. 6. AS 11.71.080 is amended to read:

5 Sec. 11.71.080. Aggregate weight of live marijuana plants. For purposes of
6 calculating the aggregate weight of a live marijuana plant, the aggregate weight shall
7 be one-sixth of the measured weight of the marijuana plant after the roots of the
8 marijuana plant have been removed [WHEN REDUCED TO ITS COMMONLY
9 USED FORM].

10 * Sec. 7. AS 12.55.135 is amended by adding a new subsection to read:

11 (k) A court may not impose a sentence of imprisonment or suspended
12 imprisonment for possession of marijuana in violation of AS 11.71.060 if the
13 defendant alleges, and the court finds, that the defendant was not under formal or
14 informal probation or parole conditions in this or another jurisdiction at the time of the
15 offense; that the defendant possessed the marijuana for the defendant's personal use
16 within the defendant's permanent or temporary residence; and that the defendant has
17 not been previously convicted more than once in this or another jurisdiction for
18 possession of marijuana. If the defendant has not been previously convicted as
19 described in this subsection, the maximum unsuspended fine that the court may
20 impose is \$500. If the defendant has been previously convicted once as described in
21 this subsection, the maximum unsuspended fine that the court may impose is \$1,000.
22 In this subsection,

23 (1) "permanent or temporary residence" means a permanent structure
24 adopted for overnight accommodation; "permanent or temporary residence" does not
25 include

26 (A) vehicles, tents, prisons or other correctional facilities,
27 residential treatment facilities, or shelters operated by a charitable organization
28 or a government agency;

29 (B) any place where the defendant's possession or use of
30 marijuana violated established rules for residents, such as a ban on smoking or
31 a ban on marijuana or other controlled substances;

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(2) "previously convicted" means the defendant entered a plea of guilty, no contest, or nolo contendere, or has been found guilty by a court or jury, regardless of whether the conviction was set aside under AS 12.55.085 or a similar procedure in another jurisdiction, of possession of marijuana; "previously convicted" does not include a judgment that has been reversed or vacated by a court.

* Sec. 8. AS 11.71.050(a)(2) is repealed.

* Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. For purposes of AS 12.55.135(k), enacted by sec. 7 of this Act, "previously convicted" includes convictions as described in those provisions whether the convictions occurred before, on, or after the effective date of this Act.

* Sec. 10. This Act takes effect immediately under AS 01.10.070(c).

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 11, 2006

SUBJECT: CSSB 74(FIN) (Work Order No. 24-GS1054\Y)

TO: Senator Lyda Green
Senator Gary Wilken
Co-Chairs, Senate Finance Committee

FROM: Pam Finley *PF*
Revisor of Statutes

Enclosed is the CSSB 74(FIN) that you requested. For purposes of clarity, we have made one change to amendment #2: We inserted "for possession of marijuana" in the definition of "previously convicted" in AS 12.55.135(k), as added by bill sec. 7. The second and third sentences of (k) rely on this definition, and the definition did not clearly indicate that previous conviction had to be for possession of marijuana. Nevertheless, based on the first sentence, it appeared that the committee intended previous convictions to be for marijuana possession. If our belief is incorrect, please let Jerry Luckhaupt or me know and we will send over another draft.

Also, the fact that the sentencing reduction of AS 12.55.135(k) is not available to those who live in tents or cars because they cannot afford an apartment leaves the provision open to challenge on equal protection grounds.

PF:ljw
06-010.ljw

SENATE FINANCE
COMMITTEE

ADOPTED

Amendment Number: # 1
Bill Number: SB 74
Sponsor: Green Date: 1/9/06
Logged In By: Robin

24G-2
1/3/2006
(1:54 PM)

AMENDMENT #1

OFFERED IN THE SENATE FINANCE
COMMITTEE

BY _____

TO: CSSB 74(JUD)

1 Page 2, lines 4 - 7:

2 Delete "To carry out the intent of the voters and the legislature, it will ultimately be
3 necessary for the courts in Alaska to come to different conclusions about state statutes relating to
4 marijuana than those expressed in Noy v. State, 83 P.3d 538 (Alaska App. 2003), and Crocker v.
5 State, 97 P.3d 93 (Alaska App. 2004)."

6 Insert "The legislature has also considered its obligation to carry out the intent of the
7 voters of Alaska in recriminalizing marijuana by ballot initiative in 1990, and in defeating ballot
8 initiatives to again decriminalize marijuana in 2000 and 2004."

9

10 Page 4, line 3, following "sell;":

11 Insert "the street value of Alaska marijuana today is between \$350 and \$550 per ounce;
12 the legislature heard evidence that possession of four ounces or more indicates an intent to
13 distribute, and therefore this is the appropriate amount to justify a felony offense;"

14

15 Page 4, lines 4 - 5:

16 Delete "adopt requirements for search warrants to investigate marijuana-growing that"

17 Insert "invalidate search warrants for commercial marijuana-growing and"

18

19 Page 6, line 17:

20 Delete "[OR]"

21 Insert "or"

1

2 Page 6, line 20:

3 Delete "or"

4

5 Page 6, lines 21 - 23:

6 Delete "(F) one or more preparations, compounds, mixture, or substances containing
7 a schedule VIA controlled substance while driving or operating a motor vehicle, aircraft, or
8 motorized watercraft;"

9

10 Page 7, lines 3 - 9:

11 Delete the following material:

12 "(3) possesses one or more preparations, compounds, mixtures, or
13 substances containing a schedule VIA controlled substance while a passenger in a
14 motor vehicle, aircraft, or motorized watercraft;

15 (4) being the driver or operator of a motor vehicle, aircraft, or
16 motorized watercraft, knowingly permits a passenger to possess one or more
17 preparations, compounds, mixtures, or substances containing a schedule VIA
18 controlled substance;"

19

20 Page 7, line 10:

21 Delete "(5) [(2)]"

22 Insert "(2)"

SENATE FINANCE COMMITTEE
1/10/2006 COMMITTEE ACTION

Bill Number	SB 74		
Amendment	#1		
Motion	to adopt		
<u>Motion by</u>	Wilken		
<u>Objection by</u>	Green		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Olson			
Senator Stedman			
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
MOTION	ADOPTED		

SENATE FINANCE
COMMITTEE

ADOPTED

Amendment Number: #2
Bill Number: SB 74
Sponsor: Green Date: 1/9/06
Logged In By: Robin

24G-2
1/5/2006
(8:25 AM)

AMENDMENT #2

OFFERED IN THE SENATE FINANCE
COMMITTEE
TO: CSSB 74(JUD)

BY _____

1 Page 7, following line 17:

2 Insert a new bill section to read:

3 " * Sec. 7. AS 12.55.135 is amended by adding a new subsection to read:

4 (k) A court may not impose a sentence of imprisonment or suspended
5 imprisonment for possession of marijuana in violation of AS 11.71.060 if the
6 defendant alleges, and the court finds, that the defendant was not under formal or
7 informal probation or parole conditions in this or another jurisdiction at the time of
8 the offense; that the defendant possessed the marijuana for the defendant's
9 personal use within the defendant's permanent or temporary residence; and that the
10 defendant has not been previously convicted more than once in this or another
11 jurisdiction for possession of marijuana. If the defendant has not been previously
12 convicted as described in this subsection, the maximum unsuspended fine that the
13 court may impose is \$500. If the defendant has been previously convicted once as
14 described in this subsection, the maximum unsuspended fine that the court may
15 impose is \$1,000. In this subsection,

16 (1) "permanent or temporary residence" means a permanent
17 structure adopted for overnight accommodation; "permanent or temporary
18 residence" does not include

19 (A) vehicles, tents, prisons or other correctional facilities,
20 residential treatment facilities, or shelters operated by a charitable

1 organization or a government agency;

2 (B) any place where the defendant's possession or use of
3 marijuana violated established rules for residents, such as a ban on smoking
4 or a ban on marijuana or other controlled substances;

5 (2) "previously convicted" means the defendant entered a plea of
6 guilty, no contest or nolo contendere, or has been found guilty by a court or jury,
7 regardless of whether the conviction was set aside under AS 12.55.085 or a similar
8 procedure in another jurisdiction; "previously convicted" does not include a
9 judgment that has been reversed or vacated by a court."

10 Renumber the following bill sections accordingly.

11

12 Page 7, following line 7:

13 Insert a new bill section to read:

14 "* Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section
15 to read:

16 APPLICABILITY. For purposes of AS 12.55.135(k), enacted by sec. 7 of this Act,
17 "previously convicted" includes convictions as described in those provisions whether the
18 convictions occurred before, on, or after the effective date of the Act."

19

20 Renumber the following bill sections accordingly.

SENATE FINANCE COMMITTEE
1 / 10 / 2006 COMMITTEE ACTION

Bill Number	SB 74		
Amendment	#2		
Motion	to adopt		
<u>Motion by</u>	Wilken		
<u>Objection by</u>	Green		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Hoffman			
Senator Olson			
Senator Stedman			
Senator Bunde			
Senator Dyson			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
MOTION	PASSED		

Attention: Darwin
Of Senator Green's office
RE: Amend. #1 + #2 SB74
Date: 11/11/06 Time: 11:10 am

The attached Senate Finance CS incorporates the amendment(s) your boss sponsored. Please review and approve so the bill can be forwarded to the Senate Secretary.

The CS is your copy.

Thanks,
Senate Finance Secretary
Mindy #4935
Robin #2618

Approved: _____
(please initial)

Return ASAP

*Note:
Memo.
from
Legal.*

*Verbal
OK 11/11/06*

Our Proof

WORK DRAFT

WORK DRAFT

WORK DRAFT

24-GS1054\
Luckhaupt
1/11/06

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IN THE LEGISLATURE OF THE STATE OF ALASKA
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6 to read:

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8 this state and to provide legislative findings concerning this Act regarding marijuana and its
9 effects in this state.

10 * Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

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13 and the changes in the patterns of usage of the drug, particularly by young Alaskans, Alaska
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1 that justifies prohibiting possession in this state, even by adults at home. In this Act, the
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Amend
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1 all persons in Alaska treated for drug and alcohol problems are treated for marijuana abuse;

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20 arrest; the percentage is particularly high for adults arrested for domestic violence who test
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23 (C) one or more preparations, compounds, mixtures, or
 24 substances of an aggregate weight of three grams or more containing a
 25 schedule IIIA or IVA controlled substance;

26 (D) 50 or more tablets, ampules, or syrettes containing a
 27 schedule VA controlled substance;

28 (E) one or more preparations, compounds, mixtures, or
 29 substances of an aggregate weight of six grams or more containing a schedule
 30 VA controlled substance;

31 (F) one or more preparations, compounds, mixtures, or

1 substances of an aggregate weight of four ounces [ONE POUND] or more
2 containing a schedule VIA controlled substance; or

3 (G) 25 or more plants of the genus cannabis;

4 (4) possesses a schedule IIIA, IVA, VA, or VIA controlled substance

5 (A) with reckless disregard that the possession occurs

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

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

8 or

9 (B) on a school bus;

10 (5) knowingly keeps or maintains any store, shop, warehouse,
11 dwelling, building, vehicle, boat, aircraft, or other structure or place that is used for
12 keeping or distributing controlled substances in violation of a felony offense under this
13 chapter or AS 17.30;

14 (6) makes, delivers, or possesses a punch, die, plate, stone, or other
15 thing that [WHICH] prints, imprints, or reproduces a trademark, trade name, or other
16 identifying mark, imprint, or device of another or any likeness of any of these upon a
17 drug, drug container, or labeling so as to render the drug a counterfeit substance;

18 (7) knowingly uses in the course of the manufacture or distribution of a
19 controlled substance a registration number that is fictitious, revoked, suspended, or
20 issued to another person;

21 (8) knowingly furnishes false or fraudulent information in or omits
22 material information from any application, report, record, or other document required
23 to be kept or filed under AS 17.30;

24 (9) obtains possession of a controlled substance by misrepresentation,
25 fraud, forgery, deception, or subterfuge; or

26 (10) affixes a false or forged label to a package or other container
27 containing any controlled substance.

28 * **Sec. 4.** AS 11.71.050(a) is amended to read:

29 (a) Except as authorized in AS 17.30, a person commits the crime of
30 misconduct involving a controlled substance in the fifth degree if the person

31 (1) manufactures or delivers, or possesses with the intent to

1 manufacture or deliver, one or more preparations, compounds, mixtures, or substances
2 of an aggregate weight of less than one [ONE-HALF] ounce [OR MORE] containing
3 a schedule VIA controlled substance;

4 (2) manufactures or delivers, or possesses with the intent to
5 manufacture or deliver, one or more preparations, compounds, mixtures, or substances
6 of an aggregate weight of less than one-half ounce containing a schedule VIA
7 controlled substance, for remuneration;

8 (3) possesses

9 (A) less than 25 tablets, ampules, or syrettes containing a
10 schedule IIIA or IVA controlled substance;

11 (B) one or more preparations, compounds, mixtures, or
12 substances of an aggregate weight of less than three grams containing a
13 schedule IIIA or IVA controlled substance;

14 (C) less than 50 tablets, ampules, or syrettes containing a
15 schedule VA controlled substance;

16 (D) one or more preparations, compounds, mixtures, or
17 substances of an aggregate weight of less than six grams containing a schedule
18 VA controlled substance; or

19 (E) one or more preparations, compounds, mixtures, or
20 substances of an aggregate weight of one ounce [ONE-HALF POUND] or
21 more containing a schedule VIA controlled substance; or

22 (4) fails to make, keep, or furnish any record, notification, order form,
23 statement, invoice, or information required under AS 17.50.

24 * Sec. 5. AS 11.71.060(a) is amended to read:

25 (a) Except as authorized in AS 17.30, a person commits the crime of
26 misconduct involving a controlled substance in the sixth degree if the person

27 (1) uses or displays any amount of a schedule VIA controlled
28 substance;

29 (2) [OR] possesses one or more preparations, compounds, mixtures, or
30 substances of an aggregate weight of less than one ounce [ONE-HALF POUND]
31 containing a schedule VIA controlled substance;

Amend #1

language deleted per Amend #1

language deleted per Amend #1

1 or

2 (3) [(2)] refuses entry into a premise for an inspection authorized under
3 AS 17.30.

4 * Sec. 6. AS 11.71.080 is amended to read:

5 Sec. 11.71.080. Aggregate weight of live marijuana plants. For purposes of
6 calculating the aggregate weight of a live marijuana plant, the aggregate weight shall
7 be one-sixth of the measured weight of the marijuana plant after the roots of the
8 marijuana plant have been removed [WHEN REDUCED TO ITS COMMONLY
9 USED FORM].

10 * Sec. 7. AS 12.55.135 is amended by adding a new subsection to read:

11 (k) A court may not impose a sentence of imprisonment or suspended
12 imprisonment for possession of marijuana in violation of AS 11.71.060 if the
13 defendant alleges, and the court finds, that the defendant was not under formal or
14 informal probation or parole conditions in this or another jurisdiction at the time of the
15 offense; that the defendant possessed the marijuana for the defendant's personal use
16 within the defendant's permanent or temporary residence; and that the defendant has
17 not been previously convicted more than once in this or another jurisdiction for
18 possession of marijuana. If the defendant has not been previously convicted as
19 described in this subsection, the maximum unsuspended fine that the court may
20 impose is \$500. If the defendant has been previously convicted once as described in
21 this subsection, the maximum unsuspended fine that the court may impose is \$1,000.
22 In this subsection,

23 (1) "permanent or temporary residence" means a permanent structure
24 adopted for overnight accommodation; "permanent or temporary residence" does not
25 include

26 (A) vehicles, tents, prisons or other correctional facilities,
27 residential treatment facilities, or shelters operated by a charitable organization
28 or a government agency;

29 (B) any place where the defendant's possession or use of
30 marijuana violated established rules for residents, such as a ban on smoking or
31 a ban on marijuana or other controlled substances;

Amend #1

Amend #2

Cont ->

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12

(2) "previously convicted" means the defendant entered a plea of guilty, no contest, or nolo contendere, or has been found guilty by a court or jury, regardless of whether the conviction was set aside under AS 12.55.085 or a similar procedure in another jurisdiction (of possession of marijuana); "previously convicted" does not include a judgment that has been reversed or vacated by a court.

* Sec. 8. AS 11.71.050(a)(2) is repealed.

* Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. For purposes of AS 12.55.135(k), enacted by sec. 7 of this Act, "previously convicted" includes convictions as described in those provisions whether the convictions occurred before, on, or after the effective date of this Act.

* Sec. 10. This Act takes effect immediately under AS 01.10.070(c).

Amend
2
cont.

Amend
#2

added per memo from Legal.



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

FAX COVER SHEET

DATE: 10 Jan 2006 TIME: 1:25 pm

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 5

FROM: MINDY ROWLAND
SENATE FINANCE COMMITTEE SECRETARY
PHONE: 465-4935
FAX: 465-2187

NOTES: New (FIN) Workdraft c.s. please
CS SB 74 (JUD)
plus 2 amendments - attached

Thx
Mindy

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSSB 74(JUD)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Crimes Involving Marijuana RDU Alaska Court System
Component Trial Courts
Sponsor Senate Rules Committee
Requester Governor Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2006) cost: 00
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Judiciary Committee Substitute for Senate Bill 74 decreases from one pound to four ounces the amount of marijuana sufficient to constitute a felony offense for possession under AS 11.71.040. Under current law, possession of less than one pound of marijuana is a misdemeanor. Additionally, the bill creates new offenses related to marijuana possession in a vehicle and raises the penalties for certain delivery offenses. An increase in the number of felony filings impacts the court system because felony cases must go to a grand jury, the felony trial rate is much higher than the misdemeanor trial rate and, because those convicted of felony crimes are subject to supervised probation by the Department of Corrections, the court will see more petitions to revoke probation. Although these changes will impact the court system, the extent of that impact is too speculative to support a fiscal note at this time. However, if that impact proves to be significant the court system may return to the legislature with a request for additional funding.

Prepared by: Doug Wooliver, Administrative Attorney Phone 463-4750
Division Alaska Court System Date/Time 1/10/06 @ 1:00 pm
Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 1/10/2006
Agency Alaska Court System

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

Commercial and Fair Business Section
P.O. BOX 110300
123 4TH ST., DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2539

March 1, 2005

Sectional Analysis of SB 74 (Marijuana)

(Prepared by the Department of Law, March 1, 2005)

SB 74 would enlarge the class of persons to whom delivery of certain controlled substances constitutes a crime; add new types of misconduct involving certain controlled substances that constitute a crime; lower the possession threshold amounts for certain degrees of misconduct involving a controlled substance; make the possession of any amount of marijuana a crime; and change the formula for calculating the aggregate weight of marijuana plants.

Sec. 1: Section 1 sets out the purpose of the bill.

Sec. 2: Section 2 sets out the bill's findings.

Sec. 3: Section 3 makes it a crime under the statute to deliver certain controlled substances to someone under the age of 21. Under the current law, delivery to someone who is under 19 and at least three years younger constitutes a crime.

Sec. 4: Section 4 lowers the minimum amount of certain controlled substances a person must possess to constitute a crime under the statute from one pound to four ounces.

Sec. 5: Section 5 lowers the minimum amount of certain controlled substances a person must possess to constitute a crime under the statute from one pound or more to one ounce or more. It also criminalizes under the statute the act of possessing certain controlled substances while driving or operating a motor vehicle, aircraft, or motorized watercraft.

Sec. 6: Section 6 lowers the minimum amount of certain controlled substances a person must possess to constitute a crime under the statute from less than one-half pound to less than one ounce.

Section 6 also adds the following types of conduct to the list of conduct that is criminalized under the statute:

- manufacture, delivery, or possession with intent to manufacture or deliver less than one ounce of certain controlled substances;

- possession of certain controlled substances while a passenger in a motor vehicle, aircraft, or motorized watercraft;
- being the driver or operator of a motor vehicle, aircraft, or motorized watercraft and knowingly permitting a passenger to possess certain controlled substances.

Sec. 7: Section 7 changes the calculation of the aggregate weight of a marijuana plant to be a percentage of the measured weight of a plant after its roots have been removed.

Sec. 8: Section 8 sets out an immediate effective date.

Current Alaska Law			CS SB 74 (FIN)
Misconduct involving controlled substances in the third degree AS 11.71.030; class B felony			
delivers (sells or gives)	any amount to person under 19, and three years younger	Sentence for first offender: 2-4 years; max for repeat offender with aggravated facts: 10 years	No change
Misconduct involving controlled substances in the fourth degree AS 11.71.040; class C felony			
grows, delivers or possesses with intent to deliver	1 ounce or more	Sentence for first offender: 0-2 years; max for repeat offender with aggravated facts: 5 years	No change
possesses	1 pound or more		1/4-pound or more: the amount that the Alaska Court of Appeals agrees indicates an intent to sell
possesses	25 or more marijuana plants		No change
possesses	any amount on school grounds and within 500 feet		No change
Misconduct involving controlled substances in the fifth degree AS 11.71.050; class A misdemeanor			
possesses	1/2 pound to 1 pound	No minimum sentence, maximum sentence for "worst" offender with long criminal record or particularly aggravated facts: 1 year	1 ounce to 1/4-pound
grows, delivers or possesses with intent to deliver	1/2 ounce to 1 ounce		Less than 1 ounce
grows, delivers or possesses with intent to deliver, for money	less than 1/2 ounce		Repealed, because included in category above
Misconduct involving controlled substances in the sixth degree AS 11.71.060; class B misdemeanor			
possesses	up to 1/2 pound (up to 1/4 pound in home protected by court decision)	No minimum sentence; under CSSB 74(FIN) maximum sentence for first offender \$500; under CSSB 74(FIN) max for second offender \$1000; max for third offender 90 days	Less than 1 ounce
uses or displays	any amount		No change

FRANK H. MURKOWSKI
GOVERNOR
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SB74
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 20, 2005

The Honorable Ben Stevens
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to marijuana. I believe it is time for the Alaska Legislature to take a stand and debunk the myth that marijuana is a harmless recreational drug.

It is very troubling to me that our young people have access to the drug and are using it. In recent years, Alaska had the highest rate in the nation of persons over the age of 12 trying marijuana for the first time. Approximately two-thirds of these new smokers were children ages 12 - 17. This same age group of children made up over half of the state's 363 treatment admissions in 2003 for marijuana abuse. Many more go untreated each year.

The problem is particularly great for Alaska Natives. In 2003, the self-reported rate of current use for Alaska Native students in the ninth grade (age 15) was 36.96 percent, nearly three times the rate for non-Native Alaska students. For tenth graders, the rate of current use by Alaska Native students was 41.77 percent. Alaska Natives also made up approximately 35 percent of the statewide treatment admissions for marijuana abuse in 2003. The numbers of our youths trying marijuana for the first time and entering treatment foretells a dim future if nothing is done.

Although marijuana smoke contains hundreds of substances, some of them carcinogenic, the principal psychoactive ingredient is delta-9 tetrahydrocannabinol (commonly known as THC). In the 1960's and 70's, marijuana was primarily used by college students and "hippies," and the average THC content was less than one percent. But today, the average THC content in marijuana is six times that level, at 6.4 percent. Drug dealers in Alaska have turned indoor marijuana growing into a science and marijuana grown here has been found with a THC content in excess of 20 percent. Our young people thus have access to, and are using, marijuana that is a potent hallucinogenic.

In 1975, the Alaska Supreme Court studied marijuana and concluded, in *Ravin v. State*, that the scientific evidence on its effects did not justify making it a

COMMITTEE COPY

The Honorable Ben Stevens
January 20, 2005
Page 2

crime for adults to possess small amounts in private. More recently, the Alaska Supreme Court has shown an unwillingness to reconsider the latest scientific evidence on the harmful effects of marijuana. A rational evaluation of marijuana's harmful effects must occur, and the Legislature should do that -- not the courts. This bill would provide a forum for the Legislature to hear expert testimony on the effects of marijuana and to make findings that the courts can rely on in cases where marijuana is an issue.

In addition to educating the Legislature, courts, and the public about the harmful effects of marijuana, this bill would deter possession and use of marijuana by increasing criminal penalties for certain types of possession. It also would provide a fair and efficient process for determining the usable weight of live marijuana plants in criminal prosecutions.

Current law makes it a class B felony to give or sell marijuana, and schedule IVA and VA controlled substances, to someone age 18 or younger, but only if the dealer is at least three years older. Right now, if a 19-year-old gives a small amount of marijuana to a 17-year-old, it is the lowest level misdemeanor offense. When the law classifies such conduct as such a low-level offense, it provides no deterrence for young adults.

Marijuana is particularly harmful for young users, and it should be a serious crime to give or sell marijuana to someone under age 21, no matter how old the "dealer" may be. Expanding the current class B felony penalty for providing marijuana, and schedule IVA and VA controlled substances, to someone under age 21, regardless of the age difference between the user and the dealer, would allow the Superior Court to punish adults who supply our youths.

The bill also would make it a class C felony (the lowest felony level) to possess four ounces or more of marijuana, compared to current law, which reserves this felony level only for those who possess a whole pound or more. Four ounces of high-THC marijuana has a street value of up to \$2,000. Given the increase in the value and potency of marijuana, it is appropriate to apply higher penalties to possession of this amount.

The bill also would adjust misdemeanor penalties related to marijuana. The bill would make it a class A misdemeanor to possess one ounce or more of marijuana, as compared with current law, which allows misdemeanor penalties even for those who possess from a half-pound to up to one pound of marijuana. The bill would reserve the lowest misdemeanor penalties (class B misdemeanor), for possession of less than one ounce of marijuana, which is still a significant amount, both in dosage and cost.

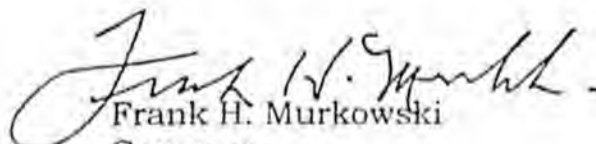
The Honorable Ben Stevens
January 20, 2005
Page 3

The bill also tackles marijuana and driving, which even the Supreme Court in *Ravin* recognized as a potentially serious problem back in 1975. Unlike alcohol, there is no effective way for law enforcement officers to quickly and easily test the amount of marijuana in a person's blood, breath, or urine. Thus, the best way to deter using marijuana and driving is to prohibit it in motor vehicles. This bill would make it a class A misdemeanor for the driver of a motor vehicle to possess any amount while driving or operating a motor vehicle. This is the same level of offense as driving under the influence, although this bill does not require mandatory penalties as required for driving under the influence (DUI) offenses. The bill also would make it a class B misdemeanor if a passenger in a motor vehicle possesses any marijuana, or if the driver allows a passenger to do so.

Finally, the bill would provide a fair and efficient process for determining the usable weight of live marijuana plants. Under current statutory law, to determine the weight of marijuana from a growing plant, the law enforcement officers must harvest, dry, and process the marijuana just like a marijuana grower would. This is required for two reasons. First, the plants cannot be allowed to remain damp, or a mold will form that not only destroys the evidence, but is also dangerous to the officers handling the plants. Second, this processing is statutorily required because the plant can only be weighed after it has been "reduced to its commonly used form." (AS 11.71.080.) The obvious problem with this statute is that it forces the law enforcement officers to operate large marijuana drying and processing facilities at great expense and effort. The plants must be spread out and dried, and then the law enforcement officers must begin the laborious task of separating the less usable stalks from the leaves, buds, and flowers. Even then, there are often arguments in court about whether the law enforcement officers correctly processed the plants, or whether they left in too many stalks. This bill solves the problem by allowing the law enforcement officers to weigh the unprocessed harvested plants, and declares that one-sixth of that weight is used for determining what level of crime is involved. The one-sixth ratio was determined by experimentation of the Alaska State Troopers, and represents an average of several test batches of live marijuana plants that were dried and processed to their "commonly used form."

I urge your prompt and favorable action on this measure.

Sincerely yours,


Frank H. Murkowski
Governor

Enclosure

SENATE COMMITTEE REPORT

DATE: 4/4/05

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 5/5/05

Judiciary Committee considered

SENATE BILL NO. 74

SB 74 CRIMES INVOLVING MARIJUANA/OTHER DRUGS

"An Act making findings relating to marijuana use and possession; relating to marijuana and misconduct involving a controlled substance; and providing an effective date."

and recommends:

- be replaced with _____ CS SB 74 (JUD)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
SCS House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
COR (IF)	4/21/05		✓		6
COR (Parole)	4/21/05		✓		7

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DPS	1/20/05			✓	1
ADM	1/19/05	X			2
LAW	1/14/05			✓	3
HSS	1/20/05			✓	4
CRT	3/30/05		✓		5

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>[Signature]</i>			X	
<i>[Signature]</i>			X	
<i>[Signature]</i>			X	
<i>[Signature]</i>			X	
CHAIR: <i>Ralph Seebins</i>	✓			

French
Huggins
Therriault
Guess

Seebins

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 1/21/05

FURTHER: Judiciary
Finance

Date of 5-Day Notice: 3/17/05
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4.1.05

Health, Education and Social Services Committee considered

SENATE BILL NO. 74

SB 74 CRIMES INVOLVING MARIJUANA

"An Act making findings relating to marijuana use and possession; relating to marijuana and misconduct involving a controlled substance; and providing an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- Same Title
- New Title

House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
ACS	3/30		X		5

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DPS				X	1
ADM		X			2
LAW	1/14			X	3
HSS	1/20			X	4

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:

	Do PASS	Do NOT PASS	No REC	AMEND
Wilken <i>[Signature]</i>	✓			
Elton <i>[Signature]</i>		✓		
Olson <i>[Signature]</i>			✓	
Dyson CHAIR: <i>[Signature]</i>	✓			