

**HB**

**337**

<TARGET><BILL>HB 337</BILL><SUBJECT>HB  
337</SUBJECT><COMM>HFIN29</COMM></TARGET>

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# Fiscal Note

State of Alaska  
2016 Legislative Session

Bill Version:	CSHB 337(L&C)
Fiscal Note Number:	1
(H) Publish Date:	3/24/2016

Identifier: HB337-DCCED-AMCO-03-08-16  
 Title: MARIJUANA TAXES;EXCESS  
 POSSESSION;BONDS  
 Sponsor: LEDOUX  
 Requester: (H) Labor & Commerce

Department: Department of Commerce, Community and  
 Economic Development  
 Appropriation: Alcohol and Marijuana Control Office  
 Allocation: Alcohol and Marijuana Control Office  
 OMB Component Number: 3119

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates					
			FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
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>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None							
<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>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
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**Estimated SUPPLEMENTAL (FY2016) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2017) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes  
 If yes, by what date are the regulations to be adopted, amended or repealed? 12/31/17

**Why this fiscal note differs from previous version:**

Not applicable, initial version.

Prepared By:	Cynthia Franklin, Director	Phone:	(907)269-0351
Division:	Alcohol and Marijuana Control Office	Date:	03/08/2016 03:49 PM
Approved By:	Catherine Reardon, Director	Date:	03/08/16
Agency:	Division of Administrative Services, DCCED		

## FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2016 LEGISLATIVE SESSION

**Analysis**

This bill creates a requirement that marijuana cultivation facility license holders be bonded, and allows the Marijuana Control Board to suspend a marijuana cultivation facility license if a license holder fails to meet the bonding requirements or fails to pay its taxes. Additionally, the legislation creates a requirement that the Department of Revenue receive and approve a bond, and notify the Marijuana Control Board of that approval prior to issuance of a marijuana cultivation facility license.

The bill will require some changes to regulations related to application requirements and justifications for suspension of licenses. These changes are anticipated to be included with planned regulation packages. The Alcohol and Marijuana Control Office does not anticipate fiscal impact from this legislation.

# Fiscal Note

State of Alaska  
2016 Legislative Session

Bill Version:	CSHB 337(L&C)
Fiscal Note Number:	2
(H) Publish Date:	3/24/2016

Identifier: HB337-DOR-TAX-3-9-16  
 Title: MARIJUANA TAXES;EXCESS  
 POSSESSION;BONDS  
 Sponsor: LEDOUX  
 Requester: House Labor and Commerce Committee

Department: Department of Revenue  
 Appropriation: Taxation and Treasury  
 Allocation: Tax Division  
 OMB Component Number: 2476

### Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates					
			FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
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>0.0</b>	<b>0.0</b>

### Fund Source (Operating Only)

None								
<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>	<b>0.0</b>	<b>0.0</b>

### Positions

Full-time								
Part-time								
Temporary								

<b>Change in Revenues</b>		***	***	***	***	***	***	***
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**Estimated SUPPLEMENTAL (FY2016) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2017) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

### ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes  
 If yes, by what date are the regulations to be adopted, amended or repealed? 09/01/16

### Why this fiscal note differs from previous version:

Initial version
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Prepared By:	Ken Alper, Director	Phone:	(907)465-8221
Division:	Tax Division	Date:	03/08/2016 05:00 PM
Approved By:	Jerry Burnett, Deputy Commissioner	Date:	03/09/16
Agency:	Department of Revenue		

## FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2016 LEGISLATIVE SESSION

**Analysis**

HB337 provides the Department of Revenue three additional tools to enforce and collect the new excise tax on marijuana, which is set to begin generating revenue with the start of commercial sales this summer. These tools include:

1) Establishment of a "tax penalty" for surplus possession of marijuana in excess of the allowable number of plants for personal use. Marijuana beyond the legal limit of plants would be subject to taxation by the Department of Revenue at the commercial rate of \$50 / oz, in addition to being seized. This will provide an important enforcement alternative to the criminal penalties that remain in statute. We believe this would be an effective deterrent to large unlicensed grow operations which could impact the development of a legitimate, taxed, and regulated industry.

2) Adding a secondary tax liability to marijuana retailers, if they were found to be in possession of product for which they cannot provide proof of having obtained it from a licensed grower. In this circumstance, the retailer would be required to pay the \$50 / oz tax. In addition to any law enforcement remedies, we believe it would be good policy and a strong deterrent to make the purchaser / seller of unlicensed marijuana liable for all taxes that would have been paid had that product originated from a legitimate source. It should be noted that the Department currently has the identical authority regarding alcoholic beverages, per AS 43.60.040(c).

3) Establishment of a bonding requirement on marijuana taxpayers. This would be a requirement for awarding a license under Title 17. Should taxes not be paid, the bond could be forfeited to the State.

The bill also includes conforming language that will mandate the electronic filing of marijuana tax returns. This will help to implement the general electronic filing language that the Department hopes to add via other legislation this session.

**Implementation Cost**

The tax division can implement this legislation with existing resources, both within our Excise Audit group as well as the Department of Revenue's Criminal Investigations Unit (CIU). CIU works closely, and is co-located, with the investigations unit of the Alcoholic Beverage Control Board / Marijuana Control Board, within the Department of Commerce, Community and Economic Development.

**Revenue Impact**

The revenue brought in through these additional authorities is indeterminate. In practice, revenue will be gained in two ways. First, there will be certain tax penalties levied through the enforcement of these statutes. Second, we believe there will be substantial deterrent effect, which will result in a larger percentage of Alaska's marijuana growers to choose to seek legal status through the MCB's licensing process, and a larger percentage of retailers to purchase their product from licensed sources. Ultimately, the success of Alaska's legal marijuana industry will depend in large part on our ability to minimize or eliminate the illegal black market economy that has traditionally existed for this product.

# ALASKA STATE LEGISLATURE

*Interim – May-December:*  
716 W. 4<sup>th</sup> Ave., Ste. 611  
Anchorage, AK 99501  
907-269-0216  
907-269-0218 (fax)



*Session – January-April:*  
State Capitol, Rm. 118  
Juneau, AK 99801  
907-465-4998  
907-465-4419 (fax)

## REPRESENTATIVE GABRIELLE LEDOUX

Rep.Gabrielle.LeDoux@akleg.gov

### **Sponsor Statement – House Bill 337**

#### **CS Version E**

#### ***Marijuana Taxes; Excess Possession; Bonds***

Since Alaskans voted to legalize marijuana, state and local officials have worked to ensure smooth implementation of the initiative. Public safety has rightly been their primary concern; however, effective revenue collection is another priority to be addressed before commercial cultivation and sale begins. Hence, House Bill 337 was introduced to enhance marijuana tax enforcement by the Department of Revenue.

House Bill 337 addresses marijuana taxes in three substantive ways. First, it establishes a bonding requirement for all marijuana cultivators seeking licensure, which would be forfeited if taxes are not paid.

Second, this bill makes product manufacturers and retailers secondarily liable for marijuana taxes, to ensure inventory comes from a legal, tax-paying source. Licensed businesses would be deterred from selling marijuana purchased from an unlicensed cultivator because of the requirement that they pay taxes on any inventory they cannot prove came from a legal grower.

Finally, it authorizes the Department to assess a tax on marijuana plants that exceed the possession limit for adults not licensed under AS 17.38. More extensive unlicensed marijuana grow operations are typically intended for distribution and present a significant threat to the legal industry. This provision may deter large-scale illegal cultivation with the threat of civil penalties that treat illegal marijuana plants as taxable product.

House Bill 337 has an immediate effective date, with the intent that these new requirements will be in effect by the time that licenses are issued in June of 2016.

Particularly in this fiscal climate, the State should have the tools to maximize its collection ability for existing taxes. By creating a more robust tax framework for marijuana, House Bill 337 would ensure that this goal is met from Day 1 of the commercial industry.

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## REPRESENTATIVE GABRIELLE LEDOUX

Rep.Gabrielle.LeDoux@akleg.gov

### Sectional Analysis – House Bill 337

#### CS Version E

#### *Marijuana Taxes; Excess Possession; Bonds*

**Section 1** amends AS 17.38.200 by adding the bond created in Section 3 to the marijuana establishment requirements.

**Section 2** amends AS 43.61.020(a) to require electronic filing of marijuana tax returns.

**Section 3** amends AS 43.61 adding two new sections:

**Sec. 43.61.040** grants the tax division authority to assess a tax on marijuana plants found in excess of the possession limit for adults not licensed under AS 17.38.

**Sec. 43.61.050** requires a marijuana cultivation facility to furnish a cash or surety bond, to be forfeited if taxes are not paid. It also makes marijuana product manufacturing facilities and retail marijuana stores secondarily liable for taxes on their marijuana inventory and responsible for providing proof that their marijuana inventory is legitimate, upon request by the department.

**Section 4** provides for an immediate effective date.

# ALASKA STATE LEGISLATURE

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## REPRESENTATIVE GABRIELLE LEDOUX

Rep.Gabrielle.LeDoux@akleg.gov

### Explanation of Changes – House Bill 337

#### Version W to CS Version E

#### *Marijuana Taxes; Excess Possession; Bonds*

#### **Bond Requirement**

**Section 43.61.050** was amended in House Labor and Commerce to give marijuana cultivators the option of furnishing a \$5000 cash bond or surety bond. The change was made in response to public testimony.

#### **Effective Date**

**Section 4** was added in Version E to make HB 337 effective immediately. Version W did not prescribe an effective date.



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

Department of Revenue

TAX DIVISION

Juneau Office  
333 Willoughby Ave, 11<sup>th</sup> Floor  
Juneau, AK 99801  
Main: 907.465.2320  
[www.tax.alaska.gov](http://www.tax.alaska.gov)

February 26, 2016

The Honorable Gabrielle LeDoux  
Alaska State Representative  
State Capitol Room 118  
Juneau AK 99801

**Delivered electronically via email**

Dear Representative LeDoux

Thank you for introducing HB 337, "An Act relating to taxes on marijuana."

The Tax Division strongly supports the goals and concepts proposed in this legislation.

The bill provides three essential tools that will enable the Department of Revenue to enforce and collect the new excise tax on marijuana, which is set to begin generating revenue with the start of commercial sales this summer. These tools include:

- 1) Establishment of a "tax penalty" for surplus possession of marijuana in excess of the allowable number of plants. Marijuana beyond the legal limit of plants would be subject to taxation by the Department of Revenue at the commercial rate of \$50 / oz, in addition to being seized. This will provide an important enforcement alternative to the criminal penalties that remain in statute. Our internal analysis shows that the recent arrest of a large marijuana growing operation in Homer, if we currently had this authority, could result in a quick and very enforceable civil penalty of \$250,000. We believe this would be an effective deterrent to large unlicensed grow operations which could impact the development of a legitimate, taxed, and regulated industry.
- 2) Adding a secondary tax liability to marijuana retailers, if they were found to be in possession of product for which they cannot provide proof of having obtained it from a licensed grower. In this circumstance, the retailer would be required to pay the \$50 / oz tax. In addition to any law enforcement remedies, we believe it would be good policy and a strong deterrent to make the purchaser / seller of unlicensed marijuana liable for all taxes that would have been paid had that product originated from a legitimate source. It should be noted that the Department currently has the identical authority regarding alcoholic beverages, per AS 43.60.040(c).

- 3) Establishment of a bonding requirement on marijuana taxpayers. This would be a requirement for awarding a license under Title 17. Should taxes not be paid, the bond could be forfeited to the State.

We also appreciate that the bill includes conforming language that will mandate the electronic filing of marijuana tax returns. This will help to implement general electronic filing language that we are hoping to add via other legislation this session.

We look forward to working with you and your staff in support of this important legislation. Please let us know if we can provide any information or assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'K Alper', written in a cursive style.

Ken Alper  
Director, Tax Division  
Alaska Department of Revenue

cc: Commissioner Randall Hoffbeck, Department of Revenue  
Brandon Spanos, Deputy Director, Tax Division  
Cynthia Franklin, Alcoholic Beverage Control Board  
Lacy Wilcox, Governor's Legislative Office

James M. Barrett  
327 Distin Ave.  
Juneau, AK 99801  
Phone 907.957.4751  
rainforestjames@gmail.com

Esteemed Committee, Legislators, and Staff,

Thank you for your hard work and intelligent efforts made so far during this legislative session. There are a lot of challenges that Alaska faces right now and I have much respect and appreciation for those helping to solve these issues through upright legislation.

**I would like to provide you with my thoughts regarding the proposed legislative House Bill 337.**

I do not believe this bill is bad in any way. If there are some parts that can be deemed necessarily applicable to the industry with regard to public safety and economic growth, then I'd recommend that the Legislature move it forward. I also encourage the Committee to seek out prospective Marijuana licensees to discuss where they stand on this bill. By reaching out to more industry folks, HB-337 will gain more traction and support from both sides of the cannabis issue.

At this stage in the development of the industry, there has been a very responsible group of individuals that have been open to the public about their plans and are more than happy to be a part of drafting such legislation. Regardless of whether or not this bill moves forward, **HB-337 provides a great, non-partisan, opportunity for Legislators to connect with constituents who plan on participating in the legal market and further develop a productive relationship.**

The **surety bond** would make sense given the maturity of the market, however, I do not believe the excess growth tax part of the bill should be included within this legislation.

By putting more enforcement on the black market, one can see how this bill could potentially protect the industry in 2017. One can also see that the intention is to penalize those who intend to capitalize on loopholes in law by commercializing the black market. **However, the taxes for excessive growing is, in my opinion, over reaching and creates a situation where our government is too omnipresent in the home.** To this day, this is a freedom of privacy that Alaskans stand by and exercise. The Alaska Supreme Court decision made with *Ravin v. Alaska* further exemplifies the importance of this issue.

When looking at the little information we have on the black market, it appears as though most cannabis in Alaska currently is imported from the lower 48 States and, with a few exceptions, it is too expensive to grow in Alaska at a commercial level and still make a profit especially when competing with legitimate licensed cannabis establishments. Growing cannabis is very time consuming and expensive. When looked at dialectically, one can see how it would be easier to have cannabis imported from the lower 48 than to have a black market commercial grow operation in Alaska. Many in the industry are aware of the "lower 48 late season bumper crop" cannabis that accounts for most of the cannabis in Alaska. This is also the legal industry's biggest competitor.

So, although this bill is intended to deter the black market, the proposed excess tax will affect very little, if at all, the black market in Alaska. Furthermore, this bill may unintentionally place a governing tax authority in the home of Alaskans based on preemptive justifications.

The excess tax part of this bill may also be in conflict with *Ravin v. Alaska* which holds that 24 plants is not considered commercial production, so I'm not sure if this bill would hold through litigation. How can excess cannabis be taxed after 6 plants when 24 plants is not commercial cultivation? This bill may, therefore, challenge the Alaska Supreme Court findings in *Ravin v. Alaska*.

March 14, 2016

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**Because I am a prospective licensed cultivator, I strongly agree that it is unfair for black market growers to not comply with regulations and not pay taxes when other good law abiding businesses do.** However, after the development of the legal market emerges, these "bad players" will be far and few once the profit margins within the legal market exceed that of black market operations.

The reality of this situation is that most consumers will purchase cannabis in a licensed retail store once the market starts moving forward. As for the folks growing outside of the statutory amount and are in excess, they will most likely share with friends, just as farmer shares a plentiful harvest. **Consumers will not buy cannabis for the same price on the black market when they can purchase lab tested and labeled for less.**

If we, as an actively upright society, truly feel that regulation is not an intelligent solution to eliminating the black market, then the only practical alternative would be to ask for assistance from the Federal government. Because the DEA has been drastically de-funded for these types of operations, further enforcement from the Federal Government is unlikely. The last and most effective line of defence is to create a robust legal market as the primary deterrent.

Fortunately, the best solution to ending the black market is already in the works, AS 17.38. The majority of Alaskans voted for regulation to happen, not just because they want safe access to cannabis, but because Alaskans want a peaceful place to live.

It must be made very clear that the success of this industry will be accomplished due to the efforts that we've made through regulation, not over regulation! **Over regulation tends to be burdensome on start-up businesses at a time when a robust local economy will be the future path towards prosperity for many Alaskans.** Over regulation also creates easy avenues for the black market to capitalize upon. I would suggest that we let the industry start more organically in form rather than legislate a matter that most likely will not take form.

**The surety bond is a good idea, and the industry will back it, but the excessive grow section should be cleaned up or removed completely since it muddies the water of the good parts of the bill.** Furthermore, rather than adding to our statutes, Alaskans should first consider working on legislation that removes marijuana from criminal statute as clean-up or maintenance of the law, so to speak. This will help clarify or create future legislation as well.

I firmly believe that the current set of regulations are very strong and very well put together. The industry is very excited and truly wants to contribute positively in return. It should also be noted that cannabis businesses have been granted a great opportunity and acknowledge the responsibility that comes with it.

Thank you again for your hard work this session and I hope that this information helps you in making the right decisions for Alaska's future.

James M. Barrett  
Juneau, Alaska

# HOMER NEWS



## Police make record \$1.5 million pot bust

Posted: February 16, 2016 - 12:00pm | Updated: February 16, 2016 - 1:50pm

By MICHAEL ARMSTRONG

Staff writer

A lucky break and a nose to the wind lead Homer Police to make a record \$1.5 million cannabis bust last Friday. With help from the Soldotna Drug Enforcement Unit, police served a warrant on a 4,400-square-foot warehouse on Collie Street off East End Road and found about 1,000 marijuana plants, many with buds.

In a press release, Homer Police Chief Mark Robl estimated the street value to be between \$1 million and \$1.5 million. Robl said the plants filled up two big bays in the industrial building near Redden Marine-Kachemak Gear Shed.

While investigating the pot grow, police also contacted the tenant of the building, Joseph V. Gabryszak, 32, after he arrived. Gabryszak had been staying in an apartment in the building.

In a criminal complaint by Sgt. Ryan Browning, Gabryszak admitted the growing operation was his and his alone. Police charged him with three counts of fourth-degree misconduct involving a controlled substance, with one count for intentionally manufacturing a controlled substance, one for possessing more than 25 marijuana plants and one for maintaining a building used for keeping controlled substances. MICS 4 is a class C felon.

Robl credited Browning with finding the grow operation. According to Browning's complaint, on Feb. 6, Browning had been assisting Alaska State Troopers in searching for a wanted felon in the area. Browning parked on Collie Drive near the two-story steel building.

"While he was in the area, he saw that the building was suspicious, with windows blacked out," Robl said. "He got out of his car and was hit by a very, very strong smell of marijuana."

Browning applied for and got a search warrant. SDEU and Homer Police officers served the warrant and broke into the building. Along with the plants, they found 59 light ballasts worth \$25,000 and other equipment for a hydroponic growing system. The building also had air scrubbers. Police did not find any processed cannabis.

"He had a pretty sophisticated system," Robl said, estimating an investment of about \$50,000 overall.

In the criminal complaint, Browning said Gabryszak told him he'd worked road construction for several years to finance his cannabis grow operation.

"He (Gabryszak) stated it was about to be legal to grow marijuana and he wanted to know if he could do it," Browning wrote in his complaint.

Under Alaska marijuana regulations to go into effect on Feb. 21, the Alaska Alcohol and Marijuana Control Board will start accepting license applications for cannabis cultivation, manufacturing, testing and sale. However, the city of Homer has not yet passed any ordinances regulating commercial cannabis operations. An ordinance to regulate such operations by zoning district is up for second reading at the Feb. 22 Homer City Council meeting. If passed, the East End Mixed Use District that includes Collie Drive would be zoned for all commercial cannabis use.

Another ordinance is up for a second reading that would ban commercial cannabis in Homer. Mayor Beth Wythe also will introduce an ordinance asking for a city vote in October on whether or not to ban commercial cannabis. Wythe will introduce an amendment to the zoning ordinance postponing its implementation until and if voters reject a ban.

Gabryszak is at Wildwood Pretrial Facility in Kenai. According to state online court records, he has no prior criminal history in Alaska.

Michael Armstrong can be reached at michael.armstrong@homernews.com.

Comment

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