SB

30

<TARGET><BILL>SB 30</BILL><SUBJECT>SB
30</SUBJECT><COMM>SJUD29</COMM></TARGET>

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/23/15

FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 2/23/15

Judiciary Committee considered SENATE BILL NO. 30

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

"An Act relating to controlled substances; relating to marijuana; relating to driving motor vehicles when there is an open marijuana container; and providing for an effective date."

and recommends:

[✓] be **replaced** with **CS** SB 30 (JUD) [ ] *Same Title* [✓] *New Title*

[ ] adopt **previous CS** _____ (_____) [ ] *Same Title* [ ] *New Title*

[ ] attached amendment(s)

[ ] adopt _____ Letter of Intent

[ ] further referral to _____ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DHS	✓			1
DHS			✓	2
DHS	✓			3
LAW			✓	4

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	COSTELLO				✓
	Coghill				✓
	MICCICHE				✓
CHAIR:	McGuire	✓			

SENATE BILL NO. 30

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Introduced: 1/23/15
Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

"An Act relating to controlled substances; relating to marijuana; relating to driving motor vehicles when there is an open marijuana container; and providing for an effective date."

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

*** Section 1.** AS 11.71.040(a) is amended to read:

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

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

(2) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of **more than** one ounce [OR MORE] containing a schedule VIA controlled substance;

(3) possesses

(A) any amount of a

(i) schedule IA controlled substance; or

(ii) IIA controlled substance except a controlled substance listed in AS 11.71.150(e)(11) - (15);

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

(C) one or more preparations, compounds, mixtures, or substances of an aggregate weight of

(i) three grams or more containing a schedule IIIA or IVA controlled substance except a controlled substance in a form listed in (ii) of this subparagraph;

(ii) 12 grams or more containing a schedule IIIA controlled substance listed in AS 11.71.160(f)(7) - (16) that has been sprayed on or otherwise applied to tobacco, an herb, or another organic material; or

(iii) 500 milligrams or more of a schedule IIA controlled substance listed in AS 11.71.150(e)(11) - (15);

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

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

(F) one or more preparations, compounds, mixtures, or substances of an aggregate weight of four ounces or more containing a schedule VIA controlled substance; or

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

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

(A) with reckless disregard that the possession occurs

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

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

or

(B) on a school bus;

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

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

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

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

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

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

*** Sec. 2.** AS 11.71.050(a) is amended to read:

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

(1) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of **one ounce or** less [THAN ONE OUNCE] containing a schedule VIA controlled substance;

(2) possesses

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

(B) one or more preparations, compounds, mixtures, or

substances of an aggregate weight of less than

(i) three grams containing a schedule IIIA or IVA controlled substance except a controlled substance in a form listed in (ii) of this subparagraph;

(ii) 12 grams but more than six grams containing a schedule IIIA controlled substance listed in AS 11.71.160(f)(7) - (16) that has been sprayed on or otherwise applied to tobacco, an herb, or another organic material; or

(iii) 500 milligrams containing a schedule IIA controlled substance listed in AS 11.71.150(e)(11) - (15);

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

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

(E) one or more preparations, compounds, mixtures, or substances of an aggregate weight of **more than** one ounce **but less than four ounces** [OR MORE] containing a schedule VIA controlled substance; [OR]

(3) fails to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under AS 17.30**;**

(4) under circumstances not proscribed under AS 11.71.030(a)(2), delivers any amount of a schedule VIA controlled substance to a person under 21 years of age; or

(5) manufactures a schedule VIA controlled substance through use of a solvent-based extraction method using a substance other than vegetable glycerin.

*** Sec. 3.** AS 11.71.060(a) is amended to read:

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

(1) uses or displays any amount of a schedule VIA controlled substance **under circumstances not proscribed under AS 11.71.065**;

(2) possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of

(A) [LESS THAN] one ounce **or less** containing a schedule VIA controlled substance;

(B) six grams or less containing a schedule IIIA controlled substance listed in AS 11.71.160(f)(7) - (16) that has been sprayed on or otherwise applied to tobacco, an herb, or another organic material; or

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

* **Sec. 4.** AS 11.71 is amended by adding new sections to read:

Sec. 11.71.065. Misconduct involving a controlled substance in the seventh degree. (a) Except as authorized in AS 17.30, a person commits the offense of misconduct involving a controlled substance in the seventh degree if the person

(1) is 21 years of age or older and uses or displays any amount of a schedule VIA controlled substance in a public place; or

(2) is under 21 years of age but at least 18 years of age and uses, displays, or possesses one ounce or less of a schedule VIA controlled substance.

(b) Misconduct involving a controlled substance in the seventh degree is a violation and is punishable by a fine of not more than $100.

Sec. 11.71.067. Misconduct involving a controlled substance by a licensee. (a) A marijuana establishment licensed under AS 17.38 or an agent or employee of the licensee may not, under circumstances not proscribed under AS 11.71.030(a)(2), with criminal negligence

(1) allow another person to deliver a schedule VIA controlled substance to a person under 21 years of age within the licensed premises;

(2) allow a person under 21 years of age to enter and remain within licensed premises;

(3) allow a person under 21 years of age to use a schedule VIA controlled substance within the licensed premises;

(4) allow a person under 21 years of age to deliver a schedule VIA controlled substance; or

(5) while working on licensed premises, deliver a schedule VIA controlled substance to a person under 21 years of age.

(b) Misconduct involving a controlled substance by a licensee is a class A misdemeanor.

* **Sec. 5.** AS 11.71 is amended by adding a new section to article 1 to read:

Sec. 11.71.092. Defense to a prosecution under AS 11.71.040 - 11.71.060. (a) In a prosecution under AS 11.71.040 - 11.71.060 charging the manufacture, delivery, possession, possession with intent to manufacture or deliver, use, or display of a schedule VIA controlled substance, it is a defense that the defendant was 21 years of age or older at the time of the manufacture, delivery, possession, possession with intent to manufacture or deliver, use, or display, and

(1) if the charge is for delivery, the defendant delivered one ounce or less of a schedule VIA controlled substance and not more than six immature marijuana plants to a person 21 years of age or older at the time of the delivery and the delivery was without benefit to the defendant;

(2) if the charge is for possession, manufacture, or possession with the intent to manufacture, the possession or manufacture

(A) was of one ounce or less of marijuana, or six marijuana plants or less, with not more than three mature, flowering plants;

(B) occurred on property lawfully in the possession of the defendant or with the consent of the person in lawful possession of the property; and

(C) occurred on property that was reasonably secured from unauthorized access;

(3) if the charge is for use or display, the use or display

(A) took place in a location not subject to public view without the use of binoculars, aircraft, or other optical aids; and

(B) occurred on property lawfully in the possession of the defendant or with the consent of the person in lawful possession of the property.

(b) In a prosecution under AS 11.71.050 - 11.71.060 charging the possession,

use, or display of a schedule VIA controlled substance, it is a defense that the defendant was under 21 years of age but at least 18 years of age at the time of the possession, use, or display and

(1) if the charge is for possession, the possession

(A) was one ounce or less of a schedule VIA controlled substance;

(B) occurred on property lawfully in the possession of the defendant or with the consent of the person in lawful possession of the property; and

(C) occurred on property that was reasonably secured from unauthorized access;

(2) if the charge is for use or display, the use or display

(A) was one ounce or less of a schedule VIA controlled substance;

(B) took place in a location not subject to public view without the use of binoculars, aircraft, or other optical aids; and

(C) occurred on property lawfully in the possession of the defendant or with the consent of the person in lawful possession of the property.

(c) In a prosecution under AS 11.71.040 - 11.71.060 charging the manufacture, delivery, possession, possession with intent to manufacture or deliver, or display of a schedule VIA controlled substance, it is a defense that the defendant is a marijuana establishment licensed under AS 17.38 or an officer, agent, or employee of the marijuana establishment, and LeDoux -

(1) at the time of the manufacture, delivery, possession, possession with intent to manufacture or deliver, or display, the marijuana establishment was licensed under AS 17.38 or the officer, agent, or employee of the marijuana establishment was in compliance with AS 17.38;

(2) the manufacture, delivery, possession, possession with intent to manufacture of deliver, or display complied with the requirements of AS 17.38; and

(3) if the charge is for delivery of a schedule VIA controlled substance,

the delivery was to a person who was 21 years of age or older at the time of the delivery.

* **Sec. 6.** AS 11.71.190(b) is amended to read:

(b) Marijuana**, hashish, and hash oil or hashish oil are** [IS A] schedule VIA controlled **substances** [SUBSTANCE].

* **Sec. 7.** AS 11.71.900(14) is amended to read:

(14) "marijuana" means **all parts** [THE SEEDS, AND LEAVES, BUDS, AND FLOWERS] of the plant (genus) Cannabis, whether growing or not**, the seeds thereof,** [; IT DOES NOT INCLUDE] the resin [OR OIL] extracted from any part of the **plant, and** [PLANTS, OR] any compound, manufacture, salt, derivative, mixture, or preparation **of the plant, its seeds, or its resin, including marijuana concentrate; "marijuana"** [FROM THE RESIN OR OIL, INCLUDING HASHISH, HASHISH OIL, AND NATURAL OR SYNTHETIC TETRAHYDROCANNABINOL; IT] does not include [THE STALKS OF THE PLANT,] fiber produced from the stalks, oil or cake made from the seeds of the plant, [ANY OTHER COMPOUND, MANUFACTURE, SALT, DERIVATIVE, MIXTURE, OR PREPARATION OF THE STALKS, FIBER, OIL OR CAKE, OR THE] sterilized seed of the plant **that** [WHICH] is incapable of germination**, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products**;

* **Sec. 8.** AS 17.38.900(6) is amended to read:

(6) "marijuana" **has the meaning given in AS 11.71.900** [MEANS ALL PARTS OF THE PLANT OF THE GENUS CANNABIS WHETHER GROWING OR NOT, THE SEEDS THEREOF, THE RESIN EXTRACTED FROM ANY PART OF THE PLANT, AND EVERY COMPOUND, MANUFACTURE, SALT, DERIVATIVE, MIXTURE, OR PREPARATION OF THE PLANT, ITS SEEDS, OR ITS RESIN, INCLUDING MARIJUANA CONCENTRATE; "MARIJUANA" DOES NOT INCLUDE FIBER PRODUCED FROM THE STALKS, OIL, OR CAKE MADE FROM THE SEEDS OF THE PLANT, STERILIZED SEED OF THE PLANT WHICH IS INCAPABLE OF GERMINATION, OR THE WEIGHT OF ANY OTHER INGREDIENT COMBINED WITH MARIJUANA TO PREPARE

TOPICAL OR ORAL ADMINISTRATIONS, FOOD, DRINK, OR OTHER PRODUCTS];

* **Sec. 9.** AS 17.38.900 is amended by adding a new paragraph to read:

(15) "marijuana concentrate" means a product created by extracting cannabinoids from any part of the plant (genus) Cannabis.

* **Sec. 10.** AS 28.35.029(a) is amended to read:

(a) A person may not drive a motor vehicle on a highway or vehicular way or area, when there is an open bottle, can, or other receptacle containing an alcoholic beverage **or an open marijuana container** in the passenger compartment of the vehicle, except as provided in (b) **or (e)** of this section.

* **Sec. 11.** AS 28.35.029(c) is amended by adding new paragraphs to read:

(6) "marijuana" has the meaning given in AS 11.71.900;

(7) "marijuana accessory" has the meaning given to "marijuana accessories" in AS 17.38.900;

(8) "open marijuana container" means a receptacle or marijuana accessory that contains any amount of marijuana and that is open or has a broken seal, and there is evidence that marijuana has been consumed in the motor vehicle.

* **Sec. 12.** AS 28.35.029 is amended by adding a new subsection to read:

(e) Except as provided in AS 28.33.130, a person may transport an open marijuana container

(1) in the trunk of a motor vehicle; or

(2) on a motor driven cycle, or behind the last upright seat in a motor home, station wagon, hatchback, or similar trunkless vehicle, if the open marijuana container is enclosed within another container.

* **Sec. 13.** AS 11.71.160(f)(1), 11.71.160(f)(2); AS 17.38.020, 17.38.030, 17.38.040, and 17.38.070 are repealed.

* **Sec. 14.** This Act takes effect immediately under AS 01.10.070(c).

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U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.[1]

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

[1] These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch
United States Attorney
Eastern District of New York
Chair, Attorney General's Advisory Committee

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29th Alaska State Legislature

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Senate Judiciary Committee

SECTIONAL ANALYSIS

Senate Bill 30

Marijuana Regulation; Controlled Substances; Crimes; Defenses
Version N

Section 1:
Pages1-3: Lines 5-20

Amends misconduct involving a controlled substance in the fourth degree to apply to substances weighing more than one ounce to conform to the initiative. Delivering more than 1 ounce of marijuana is a class C felony.

Section 2:
Pages 3-4: Lines 21-26

Clarifies weights to conform to the initiative, criminalizes furnishing marijuana to a person under 21 years of age, and criminalizes the manufacturing of marijuana using a solvent-based extraction method, other than glycerin. Misconduct involving a controlled substance in the fifth degree is a class A misdemeanor.

Section 3:
Pages 4-5: Lines 27-9

Amends MICS 6 to prohibit a person under 18 years of age to consume or possess an ounce or less of marijuana. This is a class B misdemeanor.

Section 4:
Pages 5-6: Lines 10-4

Creates a new degree of misconduct involving a controlled substance by establishing a violation for consuming marijuana in a public place. In subsection two, it a violation if a person between 18 and 20 years of age consumes or possesses an ounce or less of marijuana.

It is a class A misdemeanor to, with criminal negligence, permit persons under 21 to do several actions on a licensed marijuana premise.

Section 5:
Pages 6-8: Lines 10-2

This section creates a defense in a prosecution under AS 11.71.040 – 11.71.060 charging the manufacture, delivery, possession, possession with intent to manufacture or deliver, use, or display of a schedule VIA controlled substance, provided that the defendant meets the legal requirements in AS 17.38 (over 21, an ounce or less, etc.)

Section 6:
Page 8: Lines 3-5

Moves hashish and hashish oil from schedule IIIA to schedule VIA to conform to the Ballot Measure 2 initiative.

Sections 7 and 8:
Pages 6-8: Lines 6-2

Effectively establishes the voter-approved definition of "marijuana" in AS 11.

Section 9:
Page 9: Lines 3-5

Defines "marijuana concentrate" for the purposes of excluding synthetic cannabinoids – all concentrates must be derived from the plant (genus) Cannabis.

Section 10:
Page 9: Lines 6-10

Amends the open alcohol container law to include an open marijuana container.

Section 11:
Page 9: Lines 11-17

Defines "open marijuana container" to mean a receptacle or marijuana accessory that contains marijuana that is open or has a broken seal, and there is evidence that marijuana has been consumed in the vehicle.

Section 12:
Page 9: Lines 18-24

Provides that a person may transport an open marijuana container on a motorcycle, in the trunk of a motor vehicle, or behind the last upright seat in a trunkless vehicle, if the open marijuana container is enclosed within another container.

Section 13:
Page 9: Lines 25-26

Repeals statutes relating to schedule IIIA substances, along with provisions of AS 17.38 relating to the personal use of marijuana, restrictions on personal cultivation, public consumption, and lawful operation of marijuana-related facilities.

Section 14:
Page 9: Line 27

Establishes an immediate effective date.

SENATOR
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29th Alaska State Legislature

SENATOR
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Senate Judiciary Committee

SPONSOR STATEMENT

Senate Bill 30

Marijuana Regulation; Controlled Substances; Crimes; Defenses
Version N

Senate Bill 30 revises Alaska's criminal statutes to ensure public safety of our communities following the passage of the PSUM initiative to legalize and regulate marijuana.

Senate Bill 30 provides clear rules for the public and peace officers: It criminalizes giving marijuana to a person under 21, manufacturing "butane hash" and minor consumption. The bill also synchronizes the multiple definitions of marijuana in statute, along with defining "marijuana concentrate."

The Alaska State Legislature has a duty to uphold the will of the people while keeping our communities safe. This legislation is needed in response to the Alaskans we serve. We strongly encourage your support of Senate Bill 30.

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29th Alaska State Legislature

SENATOR
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Senate Judiciary Committee

SENATE BILL 30(JUD)

Explanation of Changes Version I to S

Page 1
Lines: 8-9

Deletes: Delinquent minors
Adds: Municipalities relating to established villages and local options.

Page 20
Section 29
Lines: 9-14
Relating to Section 29: Amends **AS 12.45.084**(a) **Laboratory report of a controlled substance.**

Adds: "marijuana." and "usable marijuana" with the meanings given in AS 17.38.900.

Page 21
Section 32

Removed Section 32

The previous Section 32 Amended **AS 12.55.135**(j) Sentences of imprisonment for misdemeanors, relating to bail schedules. This section was not necessary because misdemeanors listed within this legislation do not require jail time over one year, therefore a bail schedule is not required.

Page 25
Sections 42& 43

*Amends **AS 17.38.300** to **AS 17.38.270.***

Conforming new numbers after sections numbers have been changed.

Pages 25-26
Lines 23-10

Adds Section 44: **AS 17.38.020: Relating to the personal use of marijuana**
This section has been added to conform the intent of the ballot initiative with regard to the personal use of marijuana. This section is directly taken from the ballot initiative with minor stylistic changes.

Page 28
Section 50
Lines 2-4

Amends **AS 17.38.110(a) Relating to the option for local governments.**
Local governments can prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilitates, or retail marijuana stores through the enactment of an ordinance or by voter initiative. As provided in AS 17.38.290.

Adds language to allow for an established village to have ability to prohibit the operation of marijuana cultivation facilities

Page 29
Section 51
Amends **AS 17.38.200**

-In AS 17.38.200- AS 17.38.230 adds the phrase "excepts as authorized in AS 17.38.020."

-Adds clarifying language to Subsection A.) is not a registered marijuana establishment under this chapter or acting in the person's capacity as an officer, agent, or employee of the marijuana establishment

Amends MIM in the 1st degree sections:
Section 1 (A) Person

-Removed crime of possession of more than four ounces of marijuana from AS 17.38.200
-Removes "aggregate weight."
- Adds "usable marijuana."
-Manufactures a marijuana concentrate or extract using a volatile or explosive gas
(Amended from "butane hash" without a license to make clearer previsions for use of water or safe methods of creating concentrates or preforming extractions.) .

Not amended MIM in the 1st degree sections:
- Delivers any amount to a person under 21 years of age
- Possess 25+ plants

Section 1 (B) Registered Marijuana Establishment
-Makes certain exceptions for a medical marijuana patient who is registered under 17.37 who is at least 18 years of age to enter a marijuana establishment and purchase marijuana.

Amends MIM in the 2nd degree sections:

Section 1 (B) Registered Marijuana Establishment

-Adds "usable" to the possession limit of 1 oz. of marijuana, subsection 7: (i)–(iii)
-Adds clarifying language to Subsection A.) is not a registered marijuana establishment under this chapter or acting in the person's capacity as an officer, agent, or employee of the marijuana establishment

Amends MIM in the 3rd degree sections:

AS 17.38.220. Misconduct involving marijuana in the third degree.

- Removes possession of 1.01 ounces up to four ounces.
- Possession of any amount of marijuana by a person under the age of 18 is a violation.
-Removes that misconduct in this section is punishable as provided in AS 12.55 and sets a fine of $300.

Amends MIM in the 4th degree sections:

AS 17.38.230. Misconduct involving marijuana in the fourth degree.

-Adds language to the provision regarding people over 21 and uses any amount of marijuana in a public place: except when authorized by the terms of registration issued under this chapter.
- Amends between 18-20 and uses, displays, or possesses 1 ounce or less of marijuana to any amount of marijuana.
-Removes that misconduct in this section is punishable as provided in AS 12.55 and sets a fine amount of $100.

AS 17.38.240. Proof of registration to be exhibited on demand; penalty.

-Removes that misconduct in this section is punishable as provided in AS 12.55 and sets a fine amount of $100.

AS 17.38.250. Bail forfeiture for certain offenses.

-Requires the court to make a bail schedule allowing defendants to pay the fine for violations without a court appearance for MIM 3rd (AS 17.38.220) and MIM 4th (AS 17.38.230.)
-Adds AS 17.38.240 Proof of registration to be exhibited on demand; penalty.

AS 17.38.260. Aggregate weight of live marijuana plants.
Removed

AS 17.38.270. Rehabilitation.
Removed

AS 17.38.280. Restriction on prosecution for certain persons in connection with a marijuana overdose.
Changes "marijuana overdose" to "significant adverse marijuana reaction"

AS 17.38.290. Forfeitures and seizures.
Removed.

Section 77 Amends AS 23.30.120(a) **Presumptions.**
Removed.

Section 78 Amends AS 23.30.235 **Cases in which no compensation is payable.**
Removed.

Section 88 Amends AS 28.15.176. **Administrative revocation of license**
Removed.

Section 118 Amends AS 28.35.280(a) **Minor operating a vehicle after consuming alcohol.**
Deletes "blood or urine."

Section 120 Amends AS 28.35.280(d) **Minor operating a vehicle after consuming alcohol.**
Deletes "blood or urine."

Section 121 Amends AS 28.35.285(a) **Minors refusal to submit to chemical test.**
Deletes "blood, or urine" the provision that refusal to submit to a chemical test of a person's breath.

Section 123 Amends AS 28.35.285(d) **Minors refusal to submit to chemical test.**
Deletes "blood or urine."

Section 132 Amends AS 33.30.015(a) **Living conditions for prisoners.**
Adds "possession" so the commissioner of corrections can limit using, <u>possessing</u> or consuming marijuana or marijuana products.

Section 145 Amends AS 47.37.040 **Duties of Department of Health and Social Services.**
Adds DHSS must consult with the Department of Administration when establishing and conducting programs designed to deal with the problem of persons operating a motor vehicle while under the influence of an alcoholic beverage, marijuana, inhalant, or controlled substance.

Section 160
Removes 17.38.020 from the repealed statutes and adds AS 12.555.135(j) to the list of repealed statutes.

February 12, 2015

Alaska Senate Judiciary/Alaska House Judiciary Committee
Attention Senator Lesil McGuire, Chair and Representative Gabrielle LeDoux, Chair
Pouch V
State Capitol
Juneau, Alaska 99801

Cc: Committee members

Regarding: Draft Revisions to SB 30/HB 79
Position: Oppose Unless Amended

Dear Chairs McGuire and LeDoux and members of the committee:

We appreciate legislators' and legislative staff's diligent work to revise SB 30/HB 79. In particular, we are pleased that the bill no longer creates mere defenses for actions that are lawful under Measure 2, and instead removes marijuana from the Alaska Controlled Substances Act.

The revised draft is represents a substantial improvement upon previous drafts. However, many of the issues we have raised with previous versions of this bill remain. Our concerns and suggestions are detailed in the following pages. Perhaps the most serious of them are that the redraft violates the will of voters in the following crucial ways. It:

- Deletes the initiative's comprehensive legal protections for adults. Measure 2's AS 17.38.020 makes marijuana-related conduct lawful, it protects adults from not only state charges but also municipal offenses, and it prevents seizures and property forfeitures.

- Criminalizes conduct allowed by Measure 2, including by reducing to one ounce the amount of marijuana adults can lawfully possess in the location where they cultivated the plants.

- Deletes language — "notwithstanding any other provision of law …" — that was included to ensure that legal protections for marijuana establishments and their staff trump any contradictory statutes.

We strongly urge that substantial additional revisions be made to the draft. Thank you again for the opportunity to comment. Please let us know if you have any questions.

Sincerely,

Dr. Timothy Hinterberger
Chair
Campaign to Regulate Marijuana Like Alcohol in Alaska

Rachelle Yeung, Esq.
Legislative Analyst
Marijuana Policy Project

Specific Concerns With the Draft Redraft of SB 30/HB 79

1. **The proposed redraft deletes important introductory language to each provision for protections for lawful marijuana businesses and their staff.** (Sec. 45-49)

   Each of the protections for lawful marijuana establishments and their staff begins, "[NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE]." (AS 17.38.070) The redraft would delete this crucial phrase, which would ensure that any provision of law that was inadvertently not modified — or that is enacted in the future — is trumped by this legal protection.

   This includes not only the state's criminal laws related to marijuana (which the legislature is wisely looking at amending), but also state civil laws and local ordinances. Neither the Campaign to Regulate Marijuana Like Alcohol nor the Legislature and its staff can be absolutely certain that each and every law that could be interpreted in a way that is contrary to Measure 2 is being amended.

   Indeed, early drafts of SB 30/HB 79 removed or severely limited legal protections for behavior that was legalized under Measure 2 — such as striking legal protections and replacing them with a mere defense; prohibiting the mere display of permissible amounts of marijuana in public; prohibiting the use of permissible amounts of marijuana in public view; and reducing the amount of marijuana that adults could possess on the premises where their personal plants were grown. The campaign understands that some of these concerns are being addressed in new drafts of the bill. However, this illustrates the realistic odds that not all statutes inconsistent with Measure 2 will be immediately identified and amended to be consistent with the initiative.

2. **As was the case with the original version of SB 30/HB 79, the proposed redraft would repeal Measure 2's comprehensive legal protections for adults and replace them with inadequate protections.** (Sec. 160)

   Measure 2 makes it lawful under Alaska state law *and the laws of all of its political subdivisions* for adults 21 and older to possess, give away to other adults, and produce marijuana for personal use. (AS 17.38.020) It also explicitly provides that that conduct may not be a basis for seizure or asset forfeiture. SB 30's Section 160 would repeal these comprehensive legal protections. While the redraft removes criminal penalties for *most* (but not all) of the conduct allowed by Measure 2, doing so is not nearly as comprehensive as the protections provided by in AS 17.38.020.

   If SB 30 repeals AS 17.38.020, we are concerned cities and villages could criminalize, arrest, and prosecute adults for possessing marijuana. At least one city, Wasilla, is considering an ordinance that would criminalize conduct AS 17.38.020 protects, including by prohibiting the cooking of edibles even at home and possession of more than two ounces at a single home.

It is essential that AS 17.38.020 remain on the books so that adults' personal use activities related to marijuana are not subject to arrest, forfeiture, or penalties under local ordinances. It is also crucial that these activities be explicitly "lawful" under state law. Any number of state and municipal statutes may refer to "illicit" or "illegal" activity. AS 17.38.020 makes it clear that marijuana-related activity covered by that section is indeed lawful under state law, notwithstanding federal law.

3. **As was the case with the original version of SB 30/HB 79, the proposed redraft would criminalize conduct Measure 2 makes legal, including by reducing the amount of marijuana adults could possess. (Sec. 50)**

While the current draft of HB 79 no longer includes as many provisions that would violate Measure 2, certain provisions remain that would dramatically restricts adults' freedoms relating to marijuana by criminalizing conduct voters made lawful.

Measure 2's AS 17.38.020 (b) provides that adults aged 21 and older may grow six plants (three of which may be mature) and possess all of the marijuana produced from those plants on those premises, which may exceed one ounce.

Nevertheless, SB 30/HB 79 criminalizes possession of more than an ounce, making possession of more than an ounce but less than four ounces a violation (17.38.220(a)(4)) and possession of more than four ounces a misdemeanor (AS 17.38.200 (a)(1)), regardless of whether it was produced by an individual's personal plants. Ideally, this bill would not repeal Measure 2's AS 17.38.020 so that the specific protections approved by the voters remain intact. At the very least, an exception should be made for the possession of marijuana in excess of an ounce produced by the personal plants on the premises where the plants were grown.

Furthermore, Measure 2's AS 17.38.020(b) ensures that adults can possess six whole plants, regardless of the aggregate weight of the plants. This legal protection is entirely separate from the one ounce of marijuana that adults may use and display. Section 17.38.260 of SB 30 ("Aggregate weight of live marijuana plants") must not artificially reduce that limit. This section appears to be an attempt to fit the six permissible personal plants into the one-ounce limit of AS 17.38.020(a). These two separate sections, with separate protections, must not be conflated. Again, we strongly urge the Legislature to not repeal AS 17.38.020.

4. **As was the case with the original version of SB 30/HB 79, the proposed redraft takes into account the weight of non-marijuana ingredients.** (Sec. 50)

The current draft of SB 30 continues to include the weight of non-marijuana ingredients in criminal statutes involving any preparations, compounds, mixtures, or substances containing marijuana. This explicitly contradicts Measure 2, which allows the possession of one ounce of marijuana (or more, if it's at the location where one's personal plants are grown) and which defines marijuana to exclude "the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products." Section 17.38.200(a)(2) of the bill criminalizes the manufacture or delivery of such preparations over an ounce.

However, such preparations weighing more than an ounce are often unlikely to contain a whole ounce of marijuana.

Many preparations containing marijuana, such as baked goods, can easily weigh more than an ounce while containing well under an ounce of marijuana itself. This is due to the weight of heavier, non-marijuana ingredients such as sugar and flour, and is not an accurate reflection of the potency of the product. This creates a prejudice against consumers (often patients) who prefer to eat, rather than smoke, marijuana — particularly those who prefer to create their own marijuana-infused products in such safe and traditional methods as baking.

5. **The current draft of SB 30/HB 79 does not allow for safe, solvent-based extractions involving water.** (Sec. 50)

   We applaud the committees for amending this bill to allow registered establishments to produce marijuana extracts. However, an additional exception should be made under Sec. 17.38.200(a)(4) for non-registered individuals to safely produce marijuana concentrates through the use of solvent-based extraction methods involving water. This section can easily be amended by adding "or water" after "vegetable glycerin."

6. **The current draft of SB 30/HB 79 sets the penalty for certain violations by minors higher than is permitted under Measure 2.** (Sec. 50)

   Under the current draft of the bill, AS 17.38.220(a)(2) rightfully punishes persons under 21 years of age for misrepresenting their age to a marijuana establishment in an attempt to obtain marijuana, marijuana products, or marijuana accessories. SB 30 deems such behavior "a violation" and "punishable as provided in AS 12.55." Accordingly, AS 12.55.036 provides for a fine of "no more than $500 for a violation." Sec. 17.38.050 of Measure 2 addresses this same criminal behavior. However, it sets a limit for a fine of "up to $400." Please ensure that the penalties under AS 17.38.220(a)(2) comply with Measure 2.

7. **SB 30/HB 79 continues to refer to soon-to-be no longer existent controlled substances statutes.**

   Under the current draft of SB 30, AS 11.71.040(a)(2) continues to criminalize the manufacture or delivery of "one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more containing a schedule VIA controlled substance," and AS 11.71.040(a)(3)(F) criminalizes the possession of four ounces or more of such. (Sec. 18) This is confusing because schedule VIA of the Controlled Substances Act is repealed by Section 160 of this very bill. Any reference to 11.71.060 is also confusing for this reason since it pertains to penalties for a violation relating to a schedule VIA controlled substance, which will no longer exist. (Sec. 22, 29)

8. **SB 30/HB 79 should make further exceptions to allow individuals under 21 on the premises of a licensee.** (Sec. 50)

We applaud the bill sponsors for allowing adults to deliver marijuana to registered patients under 21 (AS 17.38.200(a)(3)) and for making an exception for minors to enter a marijuana establishment at the request of a peace officer (AS 17.38.220(b)). However, further exceptions should be made for individuals who are not employed by the marijuana business and do not work directly with marijuana, but have legitimate work reasons for entering the premises. Such an exception should be made for EMTs, police officers, regulatory staff, maintenance personnel, elected officials, and members of the media. Notably, there are several far broader exceptions to a similar statute for persons under 21 who enter the premises of an establishment selling alcohol under AS 04.16.049.

9. **Under the current draft of SB 30/HB 79, the proposed definition of "marijuana concentrates" does not encompass all potential concentrates.** (Sec. 52)

   Marijuana concentrates can be produced from the resins of the marijuana plant and through methods other than extraction. We suggest:

   15) "marijuana concentrate" means a product created from the resins of or by extracting cannabinoids from any part of the plant (genus) Cannabis.

February 9, 2015

Dear Mr. Shilling:

Thank you for the opportunity to address the importance of the specific language used in Measure 2, "An Act to tax and regulate the production, sale, and use of marijuana."

At issue is the phrase "notwithstanding any other provision of law," which appears in AS 17.38.020, 17.38.060, 17.38.070(a), 17.38.070(b), 17.38.070(c), 17.38.070(d), and 17.38.070(e).

The "notwithstanding" language is at the very heart of the initiative, which was enacted by 53% of Alaska voters three months ago. Measure 2 was enacted to ensure that adults and those working at licensed marijuana businesses are not penalized for certain marijuana-related activities, and that their conduct is lawful under state law and immune from seizure and asset forfeiture. Removing this voter-enacted phrase would violate voters' intent.

This crucial phrase ensures that the initiative's voter-enacted legal protections trump each and every other state statute and local ordinance that may be contrary to them. This includes not only the state's criminal laws related to marijuana (which the legislature is wisely looking at amending), but also state civil laws and local ordinances. Neither the Campaign to Regulate Marijuana Like Alcohol nor the Legislature and its staff can be absolutely certain that each and every law that could be interpreted in a way that is contrary to Measure 2 is being amended.

Indeed, early drafts of SB 30 removed or severely limited legal protections for behavior that was legalized under Measure 2 — such as striking legal protections and replacing them with a mere defense; prohibiting the mere display of permissible amounts of marijuana in public; prohibiting the use of permissible amounts of marijuana in public view; and reducing the amount of marijuana that adults could possess on the premises where their personal plants were grown. The campaign understands that some of these concerns are being addressed in new drafts of the bill. However, this illustrates the realistic odds that not all statutes inconsistent with Measure 2 will be immediately identified and amended to be consistent with the initiative.

Furthermore, even laws that do not explicitly refer to "marijuana" may put an adult or business engaging in lawful marijuana-related behavior at legal risk. Absent the "notwithstanding" clause, laws that refer to "illegal" activity may be interpreted by courts as applying to activities that were made lawful by Alaska voters under Measure 2, but that remain illegal under federal law. For example, under Measure 2, lawfully registered corporations may engage in the possession, cultivation, processing, repackaging, storage, transportation, display, transfer, and delivery of marijuana. Such actions are to be considered legitimate business interests. Nevertheless, in an action by a member of the corporation, AS 10.20.360 allows for the liquidation of the assets and business of the corporation if "the acts of the directors or those in control of the corporation are illegal."

The "notwithstanding" language of Measure 2 would make clear that AS 10.20.360 does not apply as it relates to persons or corporations engaging in lawful marijuana-related activities. Absent that language, a judge could rule that the marijuana business' activities violated AS

10.20.360 because marijuana remains an illegal, controlled substance under federal law. Please note that this was simply the first statute that the campaign identified as potentially contradictory. We are certain that there are many more such examples throughout the Alaska statutes.

In addition to concerns about existing laws that may be counter to 17.38.020 and 17.38.070, laws that may be drafted in the future may also unintentionally contradict the legal protections of Measure 2. Preserving the "notwithstanding" language would ensure that such laws, future or present, do not penalize acts by adults that voters intended to be lawful. We recognize that the legislature will have the legal authority in two years to make any revisions it wishes to Measure 2. However, we hope that it will continue to be guided by the will of voters. The "notwithstanding" phrase will prevent inadvertent revisions and ensure that Measure 2 and voters' intent is readily apparent when the legislature considers future marijuana-related legislation.

While we understand the language is disfavored by drafting, it is used many times in Alaska statutes already. Surely, Alaska's statutes can tolerate a few more uses of the phrase to ensure that the will of the people is carried out. An identical phrase is used in Colorado's constitution under the voter-enacted Amendment 64, which legalized, regulated and taxed the adult use of marijuana.

Thank you again for the opportunity to comment. Please let us know if you have any questions.

Sincerely,

Dr. Timothy Hinterberger
Chair
Campaign to Regulate Marijuana Like Alcohol in Alaska

Rachelle Yeung, Esq.
Legislative Analyst
Marijuana Policy Project

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The "notwithstanding" language is at the very heart of the initiative, which was enacted by 53% of Alaska voters three months ago. Measure 2 was enacted to ensure that adults and those working at licensed marijuana businesses are not penalized for certain marijuana-related activities, and that their conduct is lawful under state law and immune from seizure and asset forfeiture. Removing this voter-enacted phrase would violate voters' intent.

This crucial phrase ensures that the initiative's voter-enacted legal protections trump each and every other state statute and local ordinance that may be contrary to them. This includes not only the state's criminal laws related to marijuana (which the legislature is wisely looking at amending), but also state civil laws and local ordinances. Neither the Campaign to Regulate Marijuana Like Alcohol nor the Legislature and its staff can be absolutely certain that each and every law that could be interpreted in a way that is contrary to Measure 2 is being amended.

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Thank you again for the opportunity to comment. Please let us know if you have any questions.

Sincerely,

Dr. Timothy Hinterberger
Chair
Campaign to Regulate Marijuana Like Alcohol in Alaska

Rachelle Yeung, Esq.
Legislative Analyst
Marijuana Policy Project

CRCL

Coalition for Responsible Cannabis Legislation

To: Senator Lesil McGuire

Attn.: Amy Saltzman

From: Bruce Schulte, CRCL

Date: February 10, 2015

Re: SB 30 – Draft I

Dear Senator McGuire;

Thank you for this opportunity to comment on SB30. We greatly appreciate the evolution that this bill has undergone to this point and feel that it is developing as a solid piece of legislation.

We wish to offer the following suggestions / observations:

1) Sec 50 – *17.38.200 (1)(a) – "One or more preparations, compounds, or mixtures of an aggregate weight of more than one ounce containing marijuana and"*

   This sentence is problematic because, in the case of edibles and similar products, the aggregate weight of the product would likely include a small portion of marijuana or marijuana extract / concentrate and a much larger portion of inert ingredients (for example, an infused cookie or beverage).

   Suggest rephrasing as follows:
   *17.38.200 (1)(a) – "**One or more preparations, compounds, or mixtures containing an aggregate weight of more than one ounce of marijuana or marijuana concentrate and**"*

2) Sec 50 - *17.38.200 (2) – "knowingly manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of more than one ounce containing marijuana and"*

This sentence is similarly problematic to 17.38.200 (1)(a) in that it combines the weight of both the marijuana and the product in which it is infused.

Suggest rephrasing as follows:
*17.38.200 (1)(a) – "**knowingly manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, or mixtures containing an aggregate weight of more than one ounce of marijuana or marijuana concentrate and**"*

3) Sec 50 – *AS 17.38.200 (4) - "Is not registered under this chapter and the person manufactures marijuana through use of a solvent-based extraction method using a substance other than vegetable glycerin."*

We understand and support the intent to discourage the potentially hazardous practice of hashoil extraction using butane however, as written, we feel this is overly broad and could encompass other practices using ice-water or dry-ice that are perfectly safe. This could be of particular concern for medical consumers who choose to cultivate at home but wish to use extracts for consumption or to produce their own edible products.

Suggest rephrasing as follows:
*17.38.200 (4) – "**Is not registered under this chapter and the person produces marijuana concentrates or extracts using volatile or explosive gases**."*

We believe that this more targeted language would address the legitimate concern for individual and public safety without being overly intrusive into the lives of individuals engaged in safe practices in their own homes.

4) Sec 50 – AS 17.38.200 (5) – Misconduct involving marijuana in the first degree

As written, this section appears to impose a misdemeanor penalty on a business establishment (not an individual).

Suggest rephrasing as follows:
*17.38.200 (5) – "is **<u>an employee or agent of</u>** a marijuana establishment registered under this chapter and with criminal negligence"*

Note: Pending revisions to Alaska Statutes (Title 4) pertaining to alcohol would remove criminal sanctions for employees selling to an underage customer and would, instead, leave the licensed business subject to fines or other sanctions imposed by the Control Board.

We suggest that this would be a more appropriate strategy for marijuana establishments, particularly if the revisions to Title 4 are adopted. In that case this sentence should be omitted entirely and replaced with corresponding language from the Title 4 revisions.

5) Sec 50 - AS 17.38.260 – Aggregate weight of live marijuana plants

We believe that this section should be omitted. We believe there should be no circumstance where law enforcement is required, encouraged, or authorized to destroy live marijuana plants in order to demonstrate or ascertain their weight.

Related statutes should refer either to a number of live plants present (regardless of weight) or to the weight of harvested material. Thus, this section is superfluous and could be abused by overzealous law enforcement and potentially result in civil lawsuits for damages.

6) Sec 50 – AS 17.38.290 – Forfeiture and seizures
We are opposed, in principle, to this section. The abuse of seizure and forfeiture laws has been rampant across the country and is one of the primary reasons that some Alaska voters supported this initiative.

Inclusion of this section could give law enforcement a strong economic incentive to investigate and arrest citizens just to seize their property or cash.

However, we recognize that the text of this section is almost identical to corresponding sections that apply to alcohol (AS 4.16.220) so we are reticent to oppose these sections entirely.

Therefore, we respectfully request that if this section is to be included, that it be noted that the legislature's intent is that any property or funds seized under this law would be used to fund drug education and treatment programs.

7) Sec 51 – AS17.38.900 (6) Definition of marijuana – We concur with removal of the word "Salt" as it is inapplicable in this context.

The term "Salt" appears to have been included in the initiative because that exact text is included in Federal Laws prohibiting marijuana. However, we can find no context in which this term would apply in a legitimate marijuana industry therefore, to avoid potential confusion with synthetic drugs like "Bath Salts", we support its removal from this statute as an appropriate and desirable grammatical correction.

8) Sec 52 – AS 17.38.900 – Definitions (20) – Refers to AS11.81.900 (53) "Public Place".

   We respect the prohibition on public consumption of marijuana however, we believe that the present definition in AS 11.81.900 (53) places unreasonable restrictions on the use of private property by businesses.

   We suggest that this definition should be amended to make a distinction between Public Places to which the general public have ready, unobstructed access and other places that are actually private property accessible by the public under certain circumstances (an example might be an outdoor deck or patio of a private business or a designated area indoors where consumption of marijuana products may be allowed when not in conflict with other statutes or ordinances).

   Additionally, the definition should be broad enough to allow for special events, of limited duration, where attendees pay a fee to attend and where there is a designated area for consumption of marijuana.

9) Sec 160 – Repeal of 17.38.040
   We recognize that 17.38.040 would need to be repealed with the addition of section 17.38.230. We propose that the definition of a "Public Place" be amended to allow for the consumption of marijuana products in certain locations that are on the private property of a business establishment that has consented to such consumption or on the premises of an event or business operating under a state or local license that explicitly allows the consumption of marijuana during business hours or for the duration of the event.

   It is worth noting that consumption may not always mean "smoking" in the traditional sense. Consumption habits have changed in recent years to include vaporizers that emit little, if any, residual vapor and, of course, edible products.

   The definition of public versus private space has been an issue with several local governing bodies and we believe that clarification at the state-level would be helpful.

10) Sec 160 – Repeal of 17.38.020 / 17.38.030

We recognize that many of the provisions of 17.38.020 & 17.38.030 are addressed in (new section) 17.38.200. However, given that the provisions for personal cultivation and consumption were such an important part of this initiative to many voters, we believe that both 17.38.020 and 17.38.030 should be retained. These two sections articulate what is lawful, while section 17.38.200 details the penalties for activities that are unlawful. Thus the several sections are actually complementary.

We respectfully suggest retaining 17.38.020 modified as follows:

Sec. 17.38.020. Personal use of marijuana.
*[Notwithstanding any other provision of law, e] **E**xcept as otherwise provided in this chapter, the following acts, by persons 21 years of age or older, are lawful and shall not be a criminal or civil offense under Alaska law or the law of any political subdivision of Alaska or be a basis for seizure or forfeiture of assets under Alaska law:*

(a) Possessing, using, displaying, purchasing, or transporting marijuana accessories or one ounce or less of marijuana;
(b) Possessing, growing, processing, or transporting no more than six marijuana plants, with three or fewer being mature, flowering plants, and possession of the marijuana produced by the plants on the premises where the plants were grown;
(c) Transferring one ounce or less of marijuana and up to six immature marijuana plants to a person who is 21 years of age or older without remuneration;
(d) Consumption of marijuana, except that nothing in this chapter shall permit the consumption of marijuana in public; and
(e) Assisting another person who is 21 years of age or older in any of the acts described in paragraphs (a) through (d) of this section.

CRCL

11) Sec 160 – Repeal of 17.38.050
We recognize that 17.38.050 would need to be repealed with the addition of section 17.38.220.

Thank you for considering our input on this draft bill, we appreciate the opportunity to contribute to this effort and look forward to working with you and your committee further.

Regards,

Bruce Schulte, CRCL

Bruce.Schulte@gmail.com

Coalition for Responsible Cannabis Legislation

Marijuana Products, Extracts, Derivatives, and Regulations

(Overview and recommendations)

Prepared by: CRCL Board Members

January 28 2015

CRCL - PO Box 80254 Fairbanks, AK 99709

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Preface

The purpose of this document is to clarify some of the terms, products, and processes related to the Marijuana Industry. Included are some suggested solutions to some of the more controversial issues that have been raised during public dialogue on these matters. These recommendations are not intended to be comprehensive but, rather, to serve as a reference for further discussion through the regulatory process. Some of the topics included may appear esoteric or insignificant but have been included to serve as background or reference for specific issues.

Introduction

The Coalition for Responsible Cannabis Legislation (CRCL) was founded in 2013 for the express purpose of promoting a legal, regulated Marijuana industry in Alaska and to assist in the development of rules and guidelines that will allow that industry to thrive as a responsible Alaska-based industry. With over 1,000 members statewide, CRCL brings to the table a comprehensive industry-perspective on Marijuana Business, products, and the regulatory process.

Throughout this document, it is assumed that one of the major goals to be realized with implementation of 13PSUM is to allow and encourage existing black-market operators to grow, process, and sell marijuana in a regulated, legitimate market. We believe that success in this one area will yield multiple benefits including: Reduced availability to youth, reduced work/cost for law-enforcement, new jobs statewide, and tax income sufficient to administer a marijuana control board with associated infrastructure and to fund informational programs to educate segments of the population on the responsible consumption of marijuana products. Another goal, is to make retail stores available to medicinal marijuana consumers who currently have no legal way of purchasing those products.

State of the (Black Market) Industry

Exact numbers are difficult to estimate but, by some accounts, roughly 100,000-120,000 Alaskans currently consume Marijuana on a semi-regular basis. If we assume (conservatively) an average, annual consumption of 2 ounces per consumer, then the current market may entail roughly 200,000-240,000 ounces annually (approximately 12,500-15,000 pounds. These numbers are estimates only, the current market may easily be 20-30% greater than suggested.

Due to logistics of transportation, most of the Marijuana consumed in Alaska is produced here as well. Black-market growers may produce only a few dozen plants at a time or may be as large as 1,000-2,000 plants. This range of producers is significant to the regulatory process because, in order to encourage those operators to adopt a legitimate business model, it is imperative to provide an entry-point into the industry for businesses of various sizes.

The Cannabis Plant

Chemical Properties

Cannabis plants produce two chemical compounds of significance: Tetrahydrocannabinol (THC) is the psychoactive component that may produce feelings of euphoria, relaxation, or increased appetite. The other cannabinoid of note is Cannabidiol (CBD) which is often sought for pain management or the control of seizures.

Different strains of the plant contain varying proportions of THC and CBD and some strains have been developed for greater production of one or the other. A notable example of such breeding is a strain called "Charlottes Web" which was bred to have relatively low levels of THC but much higher levels of CBD. This strain was specifically developed for its medicinal properties and has been used to control seizures in patients for whom other, powerful narcotics have been problematic. This strain was named in honor of a young girl named Charlotte whose seizures have been successfully controlled through the use of high-CBD cannabis extracts and tinctures.

Components of the Cannabis plant

Flowers: The tops of plant stalks containing the most potent concentrations of THC and CBD. Typically dried, cured and sold for consumption or processed to extract concentrates.

Trichomes: Small (75-150 micron) mushroom-shaped glands on the surface of the flower and upper leaves that contain the highest concentration of THC and CBD. Often extracted through different processes to produce concentrates largely free of organic (leaf) material. Trichomes, in various concentrations, form the most sought-after parts of flowers, hash, and hashoil, as well as other derivative products.

Fan Leaves: Larger leaves - typically on the lower portion of the plant. They were once sold as a consumable product but are now either discarded in favor of the flowers, or processed in closed-loop extractors to distill resins within for use in creating edible products.

Sugar Leaves: Smaller leaves, typically found at the ends of branches and stalks (nearest the flowers). So named for the accumulation of trichomes on the leaves which gives them a sugar-frosted appearance.

Trim: A general term applied to leftover flower and leaf material that is typically processed to produce kief, hash, hashoil, or infusions.

Stalks: Stalks and stems are of little value to the Medicinal or Recreational Marijuana market but may be sold to a secondary hemp industry for further processing.

Strains of Cannabis

There are three major species of the Cannabis genus:

1) Cannabis Sativa
2) Cannabis Indica
3) Cannabis Ruderalis

There are differences between the Sativa and Indica species that result in slightly different effects when consumed, however those differences are not considered pertinent to a regulatory discussion. Most contemporary strains are some hybrid mix of the two species.

Cannabis Ruderalis is notable because it flowers after a given period of time – not in response to the length of the day. This is significant because, considering Alaska's peak daylight hours, relative to the typical rainy season, this species may be best for outdoor growing during our fairly short growing season.

Cannabis Flowers

Most cannabis products are derived, directly or indirectly, from the flower of the female plant. The male plants produce few desirable compounds and, except in breeding and research programs, are typically destroyed as soon as they are identified as being male. The female plants continue to develop but are never fertilized by the males. The unfertilized female flowers grow larger, develop more trichomes and are more potent. These unfertilized plants are known as "Sinsemilla" plants (from the Spanish "Sin semilla" – meaning "without seeds").

Potency of contemporary strains and derivative products

Much has been made of the potency of certain strains as compared to those available 20-30 years ago. It is true that the average marijuana product available today is relatively higher in THC content but one could argue that this is more a function of the market than anything else. Discriminating consumers have become accustomed to a better product, to the point that portions of the plant are now thrown away or processed for use in edibles simply because no one is willing to buy them anymore when higher-quality flowers and concentrates are available.

It is tempting to treat concentrated forms of marijuana differently than the raw flowers or leaves, but to do so assumes a difference in the products that does not exist.

To make an analogy to alcohol, some consumers prefer beer, others prefer whiskey but they adjust their consumption accordingly to reflect the different potency of the products. Likewise, in the marijuana industry, some consumers prefer the flowers, others prefer more concentrated products (hash, hashoil, etc.) and they adjust their consumption accordingly.

This simple fact is, perhaps, one of the least understood aspects of the current discussion.

Derivative Products

Flower

The mature flower of the female cannabis plan (sometimes referred to as "Buds"). Traditionally, both the leaves and flowers of the cannabis plant were commonly consumed, most often by smoking. Though still fairly popular, flowers have given way to concentrates and edibles, and even the smoking of flowers and oils has evolved markedly over the past 20 years.

Concentrates

This section is intended to bring some clarity to the discussion on marijuana extracts/concentrates and to offer some suggestions on how they may be properly managed / regulated. It is important to note that concentrates – of one form or another – along, with edibles, now comprise as much as 50% of the market in some areas. Therefore, while simply banning such derivative products may seem desirable, doing so would virtually guarantee the perpetuation of a significant black-market industry for the foreseeable future.

Keif

Keif (or Kif) refers to the resin-filled trichomes from the flower separated from the rest of the plant using various mechanical or thermal processes (freezing the material allows the trichomes to be shaken loose and gathered). In agricultural terms, it is similar to separating wheat from chaff. The collected trichomes resemble coarse sand with a light tan or greenish tint.

Chemically, it is very similar to the flowers of the plant, lacking only the organic leaf and reproductive elements of the flower.

The resulting concentrate may be smoked or eaten by itself, added to a small amount of flower, or used in other processes to create oils or edible products. Current processes do not involve high-pressure equipment or volatile compounds of any kind – relying instead on the use of dry-ice or ice-baths to freeze the trichomes so they can be sifted from the rest of the plant material and collected.

Hash

Hash, or Hashish is merely Keif (the collected trichomes from the cannabis flower) pressed into a small block of solid material. Like Keif, Hash is chemically similar to the flowers of the plant but having had most of the organic material removed by sifting.

Hashoil
Hashoil is a liquid concentrate derived from the trichomes and other plant material. This oil extract is what remains when the cellular trichomes are stripped of the resins within. Still considered a raw product of the plant, the oil is typically extracted by exposing the plant material to pressurized CO2 or another solvent to rinse out the resin, and then evaporating the solvent. What remains is a dark, lightly viscous oil. Done properly, the final product has little to no residual solvent and resembles a concentrated oil with a relatively high ratio of THC / CBD by weight.

Hashoil has grown in popularity over the past 30 years and is now the preferred product for many recreational and medicinal consumers – representing a significant portion of the market in some areas. Hashoil can be consumed directly using pipes or vaporizers, or used to create edible products or tinctures (the last being very common amongst medical consumers).

In commercial settings, hashoil is typically derived using closed-loop extraction systems employing pressurized CO2 or other gases as a solvent. This process is very similar to that used to extract Lavender oils, Vanilla extract, and other familiar oils and extracts. In a controlled environment, with trained personnel and suitable equipment, this is a safe and very common industrial process. The International Building Codes (IBC) already provides design guidelines for facilities using such equipment and processes.

Tinctures
Tinctures are a diluted form of hashoil mixed with alcohol or glycerin and are a preferred method of consumption for some medical consumers.

Infusions
The leaves or concentrates (hashoil or hash) may be used to infuse THC in a solvent - this can include cocoa butter, dairy butter, cooking oil, glycerin, and skin moisturizers – which are then used in cannabis foods (edibles) or applied topically.

Methods of Consumption

Smoking

The most recognized and stereotypical method of marijuana consumption is smoking, with a pipe or paper-wrapped "joint". While this does produce some residual (second-hand) smoke it is typically not in the volumes associated with cigarette smoke because the amount of material burned is relatively small compared to that burned by a cigarette smoker. This method of consumption is also on the decline.

Vaporizer

Vaporizers are a growing method of marijuana consumption. Some devices function similarly to e-cigarettes where a small amount of oil or flower is vaporized within the device with a heating element – and only when triggered by the consumer. The result is a more concentrated vapor with very little residual smoke or vapor.

Cannabis Tea

Produced by adding a saturated fat (cream or milk) to hot water with a small amount of infused THC.

Edibles

This covers a broad range of products including chocolates and other confections, beverages. and baked goods (ie: cookies, bread, or the ubiquitous brownie). Many consumers prefer edible products above all other forms of consumption. Many medical consumers can only consume marijuana in edible form.

It is important to note, for regulatory purposes, that the total weight of an edible product is made up by the confection or product itself – not the concentrate used to introduce THC into the recipe,

Regulatory considerations / recommendations

Concentrates

Hash
Hash is similar in chemistry and effect to the raw flowers of the plant. Consumers often prefer hash because it lacks the organic material (leaf) of the flower. Hash production does not typically involve the use of solvents or other volatile compounds. Therefore, there is little value or need to regulate hash differently than the flowers themselves.

Hashoil
The regulatory challenge with hashoil is that, in the absence of retail stores selling a quality, tested product at a reasonable price, some consumers have taken to home-extraction using butane – and sometimes in less-than-ideal settings. Butane, like any volatile gas, can be ignited by an open flame or electrical ignition source. This has given rise to home fires and some explosions.

The concern with "butane-hashoil" is a valid one but it's important to make the distinction between the product (hashoil) which is not volatile, and the home-process of extraction using butane (which can be hazardous). To be clear hashoil, itself, is not volatile although the solvent used to extract hashoil can be in an uncontrolled environment.

Home-extraction is time-consuming, expensive, potentially hazardous, and often yields an inferior extract. The solution, in our view, is to ensure that a viable, regulated industry exists to produce this extract in a safe and economical manner so that consumers no longer have an incentive to attempt their own extraction.

We believe that such an approach would do far more to discourage the dangerous process of Butane-Hashoil production than any form of legislation could hope to.

Marketing

We agree that reasonable guidelines for marketing of marijuana products are appropriate.

However, we believe that such guidelines should not be so onerous as to make all marketing impossible. We agree that advertising that targets, or is openly visible to, underage individuals is undesirable. However, we believe that in-store advertising, web-based ads, and demographic-targeted online ads (21 and over through Facebook, for example) are a reasonable balance between public welfare and First Amendment rights.

Packaging

We agree that marijuana products should not be packaged or marketed to be enticing or attractive to children and that they should not be packaged to look, intentionally, like a familiar child-safe product.

Child-resistant packaging

It's useful to point out that, for decades, prescription drugs – including powerful opiates, barbiturates, and others – have been sold to consumers and packaged in child-resistant bottles with lids that require a modest degree of strength or dexterity to open. Many of these compounds can be immediately fatal or damaging if ingested by a child – yet the standard of protection (at least in the packaging) is clearly established.

Although marijuana products are not potentially lethal, we propose that a similar child-resistant packaging be required at the point of sale. Where a product cannot readily fit into available safety-lid bottles, an acceptable alternative might be a re-sealable pouch with a special zipper. Several such products are manufactured and are being used in Colorado. Consumers might elect to purchase one at the time of sale or re-use one from a previous transaction.

Serving Size

We agree that a standard "serving size" should be established as a guide for consumers buying edible products. Such a measure has proven both necessary and effective in other states as an appropriate consumer protection.

A likely concentration would be in the range of 5-20mg THC per serving with a recommended maximum of 4-6 servings per package (depending on the nature of the product). Products that cannot be readily re-sealed (such as a single cookie or beverage) might best be limited to a single "serving".

Labeling

We agree that marijuana and its' derivative products should have some basic labeling requirements to include:

1) THC content (by percentage)
2) Number of servings (when appropriate – typically for edibles)
3) A warning that the contents contain marijuana or marijuana derivatives

Public / Private Space (definition)

Some local lawmakers have expressed concern over the distinction between Public versus Private consumption of marijuana. We recognize that Public consumption is unlawful under the provisions of 13PSUM, however there remains the definition of what is Public Space.

There are two specific examples that can be drawn from the consumption of alcohol and tobacco:

1) Bar and restaurant owners currently have the option of allowing their patrons to smoke cigarettes in designated areas (sometimes outdoor decks or patios). Since those properties are owned by or under the legal control of the business, it is effectively Private property and we believe they should be allowed to determine for themselves if marijuana may be consumed on the premises.

   Note: In light of the proposed statewide ban on smoking we suggest that the use of e-cigarettes and vaporizers for marijuana be exempted from such a ban.

2) Special events such as the Beer and Barleywine Festival in Anchorage (and other such events around the state) are able to serve or allow the consumption of alcohol within designated areas during the event. We propose that similar events – specific to the marijuana industry – should also be allowed to designate areas for consumption / sampling on the premises and during the specific hours of the event assuming that the activity is consistent with other state or local laws pertaining to smoking of cigarettes or the use of e-cigarettes or vaporizers.

Some businesses may develop around the model of a coffee shop that serves marijuana products. Some of these may even provide designated areas for consumption. We suggest that the statewide rules should allow for such businesses – pending local approval.

Licensing of Businesses

We recognize that Public Health and Welfare are the primary goals of the licensing process, however we believe that market forces of supply and demand should ultimately be allowed to determine the success or failure of individual businesses. That said, we believe that an effective licensing process can address both of these goals.

Types of Licenses and Associated fees

Ballot Measure 2 articulated four general categories of license (Grower / Processor / Lab / Retailer).

We recommend that the License for Grower / Producer be expanded into a tiered system as follows:

Tier 1 - Fewer than 100 plants
Tier 2 - Over 100 but fewer than 2,500 plants
Tier 3 - Over 2,500 plants

We further recommend that the initial application and license fees be kept as low as possible for Tiers 1 & 2 in order to encourage existing black-market growers to transition. We believe the lower fees would be justified since these smaller operators should require less administrative time to evaluate and process. We propose that the Tier 1&2 licenses be made available earliest with the Tier 3 permits made available 4-6 months later.

This approach would give smaller operators time to become established before opening the market to larger groups that might otherwise dominate the market. This could effectively dull the effect of "Big Marijuana" taking over the Alaska market as some have suggested.

Qualifications for Licensure

We believe that the most effective way of evaluating applications would be a weighted, merit-based system whereby applicants can be evaluated on their likely ability to meet the regulatory requirements and operate a viable business. A weighted system would also allow applicants weak in one area but stronger in others to compete for available licenses.

Residency Requirements

We recommend that qualifications for those with controlling interest in a marijuana business be predicated on the same criteria as those used for the Permanent Fund Dividend – Alaska resident with a prior period of residency.

Background Checks
We agree that background checks should be conducted for individuals who would have controlling interest in a marijuana business. However, we would suggest that prior convictions for non-violent or marijuana-related offenses not be the sole grounds for license denial. The rationale here is that individuals with a felony conviction for growing marijuana may have served their time and / or parole but could still have a difficult time getting a high-paying job. That same individual might well find a high-paying career as a master-grower with a marijuana business and that could help them to get re-established in society and to provide for their families in a productive manner.

Application Process
We are adamantly opposed to a "Lottery-Style" system of licensing. Such a system could have the effect of granting licenses to individuals or groups who may not be committed or prepared to engage in this industry while denying licenses to others who are prepared to operate effectively in a regulated environment.

Rulemaking Board

It remains the position of CRCL that a dedicated Marijuana Control Board is the ideal body for working out the details of Marijuana Regulations. While we agree that Marijuana can be regulated "like" alcohol, the two products – and their associated industries – are sufficiently different that a separate board should be assigned the task of working out the regulatory details. In particular, we believe that such a board should include representatives of the Marijuana Industry and should not include members of the alcohol industry as that could result in a conflict of interest on the board.

That said, we recognize the current constraints of both time and budget and we believe that a suitable compromise would be a hybrid-board, housed within the ABC, guided by the current director (Cynthia Franklin) and utilizing existing resources of staff and office space but composed of individuals whose sole focus is Marijuana Regulations.

Rulemaking process

CRCL is aware that some individuals or groups opposed to this initiative may be attempting to delay the process indefinitely, or at least until the Legislature can repeal the law in February of 2017. Naturally, we are opposed to such a strategy.

We believe that given time to develop properly, this new industry can operate in a responsible manner and offer the Legislature every reason to *not* repeal this law in 2017. In order to do that, it is imperative that the rulemaking schedule be adhered to so that there will sufficient data available to the public and the Legislature during the 2017 session to support the continuation of a legal, regulated marijuana industry.

The rulemaking schedule defined in 13PSUM is aggressive but we believe it is achievable provided that the following conditions exist:

1) A rulemaking body is identified quickly and granted the authority to proceed with the rulemaking process.
2) The individuals assigned to the rulemaking board and any associated sub-committees are committed to the successful execution of this voter initiative.
3) No extraneous actions are taken that would intentionally or unnecessarily delay implementation or negate key aspects of the new law.

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By: Mayor DeVilbiss
Amended: 01/20/15
Adopted: 01/20/15

MATANUSKA-SUSITNA BOROUGH
RESOLUTION SERIAL NO. 15-006

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY TO REQUEST CLARIFICATION FROM THE STATE OF ALASKA ON BALLOT MEASURE 2, THE LEGALIZATION OF MARIJUANA.

WHEREAS, in the primary election, registered Alaskan voters voted in favor of Ballot Measure 2, *An Act to tax and regulate the production, sale, and use of marijuana*; and

WHEREAS, some clarification is needed to properly evaluate the regulations to put in place; and

WHEREAS, clarification is needed regarding the powers granted to borough's and the cities within those boroughs; and

WHEREAS, clarification is needed on the "one-ounce" for personal and recreational use and if it will include the liquid concentrate; and

WHEREAS, international transport and shipping is illegal, the State must consider prohibiting non-Alaskan produced marijuana to curb the black market sales and support Alaskan agriculture and business; and

WHEREAS, it is not clear if the per person rules are for each adult over the age of 21, or if that the maximum limit is per household; and

WHEREAS, we also request to restrict certain packaging that is enticing to minors; and

WHEREAS, a large number of people were concerned about access to medicinal cannabis, there is currently no differentiation between recreational marijuana high in Tetrahydrocannabinol (THC), medicinal cannabis high in Cannabinoids (CBD), and Industrial hemp or the State should consider differentiation by both definition and distinct regulations; and

WHEREAS, there is currently no control of contaminants or potency in marijuana products, minimum standards need to be established and appropriate labeling required to include both THC and CBD levels; and

WHEREAS, please clarify by law whether a passenger vehicle is considered a non-public place and whether "public" for purposes of the prohibition on consumption of marijuana in "public" include things such as private baseball fields, smoking clubs or standing on the edge of your private property; and

WHEREAS, will there be an agricultural farm use tax exemption for locally produced marijuana; and

WHEREAS, it is suggested that a percentage of the marijuana initiative authorized taxation be put toward prevention, treatment, testing, enforcement, and security; and

WHEREAS, one possibility for the control of marijuana has been using the Alcohol Control Board we recommend, based on corroborating testimony, the State should set up a separate board for the regulation of marijuana; and

WHEREAS, unanswered questions have arisen pertaining to marijuana production, processing and sales outside municipalities in the unorganized borough and the State should address these issues; and

WHEREAS, other states have found infused edible products to be problematic and their regulation should be addressed very clearly in Alaska; and

WHEREAS, licensing for commercial production, processing, and sales should not disallow or limit the number of small (which needs to be defined) local, vertically integrated operations that are suitable for many other of Alaska's agricultural products; and

WHEREAS, the Alaska landlord/tenant act needs to be clear on what rights both the landlord and tenant have, with respect to personal marijuana use, production and the right to evict; and

WHEREAS, whether any public advertising for marijuana and related products should be prohibited; and

WHEREAS, the State should consider regulation of business hours; and

WHEREAS, the State should consider allowing permits for cultivation facilities three to four months before retail sales and consider how people would obtain seeds and original cuttings.

NOW, THEREFORE, BE IT RESOLVED, the Matanuska-Susitna Borough Assembly approves of this draft for legislative and regulatory issues.

ADOPTED by the Matanuska-Susitna Borough Assembly this 20 day of January, 2015.

LARRY DeVILBISS, Borough Mayor

ATTEST:

LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)

YES: Sykes, Beck, Arvin, Colligan, Mayfield

NO: Halter

By: Assemblymember Sykes
Amended: 01/20/15
Adopted: 01/20/15

MATANUSKA-SUSITNA BOROUGH
RESOLUTION SERIAL NO. 15-007

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY ESTABLISHING A MARIJUANA ADVISORY COMMITTEE.

WHEREAS, on November 4, 2014, Ballot Measure 2 was approved statewide by the voters; and

WHEREAS, Ballot Measure 2 generally legalizes marijuana and adopts a new chapter in the Alaska Statutes found at Alaska Statute 17.38; and

WHEREAS, Ballot Measure 2 provides the framework for legalization of marijuana but there are many laws and regulations that remain to be addressed by the state of Alaska; and

WHEREAS, Ballot Measure 2 also allows for the Borough to prohibit and/or implement regulations governing the number, time, place and manner of marijuana cultivation facilities, manufacturing facilities, retail stores and testing facilities; and

WHEREAS, there is uncertainty about what regulations or laws the state of Alaska may pass; and

WHEREAS, the Borough needs to consider possible comments to the State Legislature as well as the control committee regarding laws and regulations governing marijuana; and

WHEREAS, there are many issues and factors to be considered by the Borough in deciding all the local issues associated with the legalization of marijuana; and

WHEREAS, the Assembly is creating an advisory committee, known as the Marijuana Advisory Committee, to advise the Assembly and Administration on any and all aspects, impacts and concerns related to the legalization of marijuana; and

WHEREAS, it is the intent of this resolution that the scope of review by the advisory board include, but not be limited to, considering input from the public, research on aspects of marijuana legalization faced by other municipalities, such as land use, regulatory compliance, law enforcement, taxes and revenue, health, education, cultivation, transportation, testing, and retail sales, become aware of legislative developments and those of other Alaska municipalities and states where marijuana is legal, and offer advice and recommendations to the Assembly and administration on both the upsides and downsides of any issue related to or impacted by the legalization of marijuana deems necessary to consider; and

WHEREAS, the board has no authority to act on behalf of the Borough or communicate on the Borough's behalf other than to make recommendations to the Assembly and Administration.

NOW, THEREFORE, BE IT RESOLVED, the Assembly hereby establishes the Marijuana Advisory Committee to be provided

secretarial and staff support principally from the Clerk's department.

BE IT FURTHER RESOLVED, the Marijuana Advisory Committee will advise the Assembly and Administration on any and all impacts of the legalization of marijuana and any issues to consider including, but not limited to, impacts on commerce, law, health, safety, education, planning, land use, and implementation of Alaska Statute 17.38.

BE IT FURTHER RESOLVED, that the Marijuana Advisory Committee shall include, but not be limited to, research on aspects of marijuana legalization faced by other municipalities, such as land use, regulatory compliance, law enforcement, taxes and revenue, health, education, cultivation, transportation, testing, and retail sales, become aware of Alaska legislative developments and those of other Alaska municipalities and states where marijuana is legal, and offer advice and recommendations to the Assembly and administration on both the upsides and downsides of any issue related to or impacted by the legalization of marijuana the board deems necessary to consider; and

BE IT FURTHER RESOLVED, the Marijuana Advisory Committee will advise and recommend how the Borough Assembly and/or Administration should comment to the state of Alaska regarding

the implementation of Alaska Statute 17.38, and report at least quarterly to the Assembly.

BE IT FURTHER RESOLVED, the Marijuana Advisory Committee will advise and recommend how the Assembly and/or Administration should implement Alaska Statute 17.38 at the local level.

BE IT FURTHER RESOLVED, the Marijuana Advisory Committee may advise and recommend how the Assembly and/or Administration should act with regards to any issue or matter affected or impacted or related to marijuana and the implementation of Alaska Statute 17.38,

BE IT FURTHER RESOLVED, in order to gather input and consider all sides of all issues, the Marijuana Advisory Committee will be comprised of 17 members who, as feasible, shall be drawn from the following broad categories:

- One from a potentially interested marijuana grower
- One from non marijuana farming operation
- One from a potentially interested marijuana retailer
- One from financial community
- One from a local business organization, (i.e. Chamber of Commerce)
- One from law enforcement
- One from health community
- One from education community

- One from planning and zoning type experience
- One from sales/marketing advertising
- Three citizens of the Matanuska-Susitna Borough who do not live in city limits
- One member representing the city government of Houston
- One member representing the city government of Palmer
- One member representing the city government of Wasilla
- One member representing the Matanuska-Susitna Borough at the Department Director or equivalent level.

BE IT FURTHER RESOLVED, the Marijuana Advisory Committee will exist until June 30, 2018.

ADOPTED by the Matanuska-Susitna Borough Assembly this 20 day of January, 2015.

LARRY DeVILBISS, Borough Mayor

ATTEST:

LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)

PASSED UNANIMOUSLY: Sykes, Beck, Arvin, Colligan, Mayfield, and Halter

Department of Law

Criminal Division

Policy Questions Surrounding Marijuana Legalization

Definition of Marijuana

- Once PSUM becomes effective there will be ***three*** different definitions of marijuana in statute.

  - Medical Marijuana:
    - "usable marijuana" means the seeds, leaves, buds, and flowers of the plant (genus) cannabis, but **does not include the stalks or roots.** (AS 17.37.070(12)).

- Drug Offense Statutes:
  - "marijuana" means the seeds, and leaves, buds, and flowers of the plant (genus) Cannabis, whether growing or not; **it does not include the resin or oil extracted from any part of the plants, or any compound, manufacture, salt, derivative, mixture, or preparation from the resin or oil, including hashish, hashish oil, and natural or synthetic tetrahydrocannabinol; it does not include the stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the stalks, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination;** (AS 11.71.900(14)).

- PSUM
- "marijuana" means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate; "marijuana" **does not include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products**; (AS 17.38.900(6)).

Concentrates

- PSUM includes "marijuana concentrate" in the definition of marijuana.

- What is a "marijuana concentrate?"

Underage Possession/Consumption

- Under PSUM:
  - A person over 21 years of age can possess, use, consume, or transport one ounce or less of marijuana. Public consumption is a violation.
- Under current law:
  - Possession of one ounce or less of marijuana is a misdemeanor.
- Once PSUM becomes effective:
  - Minors (persons under 18 years of age) will continue to be adjudicated as juvenile delinquents if they possess marijuana.
  - Persons aged 18-21 will be charged with misdemeanors if they possess marijuana.
- Question

  Should a violation be considered for persons aged 18-21? Should the penalties mirror the current Minor Consuming Alcohol statute?

Opt Out Communities

- What should the penalty be for operating marijuana cultivation facilities, product manufacturing facilities, testing facilities, or retail stores in a community that has opted to prohibit such activities?
  - The current drug offense statutes make this conduct anything from a class A misdemeanor to an unclassified felony.
  - Should an offense structure be created which is similar to alcohol?
    - Class A misdemeanor – class C felony to bring alcohol into a local option community.

Promoting Contraband

- Marijuana is still a controlled substance.
- Bringing (or receiving) a controlled substance into a correctional facility is a class C felony.
  - Other substances which are legal outside a prison facility but prohibited inside a prison facility (i.e. tobacco) are misdemeanors.
  - Should the promoting contraband statute be amended?

THE STATE of ALASKA
GOVERNOR BILL WALKER

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January 30, 2015

The Honorable Lesil McGuire
Senate Judiciary Committee Chair
State Capitol, Rm. 121
Juneau, Alaska 99801

The Honorable Gabrielle LeDoux
House Judiciary Committee Chair
State Capitol, Rm. 118
Juneau, Alaska 99801

Re: SB 30 (29-LS023\N)

Dear Senator McGuire and Representative LeDoux:

You have asked the Criminal Division for written testimony regarding SB 30 (29-LS023\N) as well as a history of marijuana law in Alaska. The Criminal Division thanks the House and Senate Judiciary Committees for the opportunity to provide this information. A history of marijuana law is attached and the Criminal Division's technical comments are provided below.

Misconduct Involving a Controlled Substance in the Fourth Degree (Sec. 1, Page 2, Line 27)

This language is currently in statute and prohibits the possession of 25 or more plants of genus cannabis (AS 11.71.040(a)). Ballot Measure 2 (the initiative) allows a person to possess six plants or less. This creates a gap in the law. Currently, there is no legal framework to handle possession of 7-24 marijuana plants.

Misconduct Involving a Controlled Substance in the Fifth Degree (Sec. 2, Page 4, Line 24)

This language prohibits the manufacture of a schedule VIA controlled substance, as defined in the bill, through the use of a solvent-based extraction method that uses a substance other than vegetable glycerin as the solvent. This conduct would be a class A misdemeanor. If a charge were brought under this section it would be for manufacturing a schedule VIA controlled substance in this manner.

Section 5 of the bill (page 6, lines 16-24) provides a defense to manufacturing charges if a person is 21 years of age or older at the time of the manufacture, the manufacture was of one ounce or less of marijuana, occurred on property lawfully owned by the defendant or with the property owner's permission, and occurred on property that was reasonably secured from unauthorized access.

Section 5 of the bill also provides a defense to manufacturing charges for marijuana establishments licensed under 17.38 and their employees (page 7, lines 20-30). In order to use this defense for a manufacturing charge, the marijuana establishment must have been licensed under 17.38 and in compliance with those licensing requirements.

Given the potential volatility of some of the substances that are commonly used with solvent-based extraction methods, it is unclear if the intent is to allow both private individuals and marijuana establishments to manufacture schedule VIA controlled substances using a substance other than vegetable glycerin.

Definitions of Marijuana and Scheduling of Hashish, and Hash Oil or Hashish Oil (Sec. 6-9, Page 8, Lines 3-31 and Page 9, Lines 1-2)

Sections 6-9 of SB 30 deal with the definition of marijuana, marijuana concentrate, and the rescheduling of hashish and hash oil or hashish oil. The definition of marijuana found in section 7 (page 8, lines 6-20) is very similar to the definition of marijuana found in the initiative. This definition includes "marijuana concentrate."

Section 9 (page 9, lines 3-5) defines "marijuana concentrate" as a product created by extracting cannabinoids from any part of the plant genus cannabis. Arguably, hashish and hash oil or hashish oil could fall under this definition and therefore be considered marijuana concentrates which are included in the definition of marijuana.

However, section 6 (page, 8, lines 3-5), which reschedules hashish and hash oil and hashish oil to a schedule VIA controlled substance, lists these substances separately from

marijuana. Therefore, while marijuana, hashish and hash oil or hashish oil are in the same schedule, because hashish and hash oil or hashish oil are listed separately within that schedule, the implication is that they are separate and distinct substances and should not be considered marijuana.

Marijuana Open Container (Sec. 11, Page 9, Lines 15-17)

Section 11 of the bill defines "open marijuana container" which is generally prohibited in the passenger compartment of a vehicle. The definition of "open marijuana container" includes the requirement that there be evidence that the marijuana has been consumed in the motor vehicle. It is unclear what the intent is in adding this requirement. This requirement is unlike the current open container provision for alcohol which generally prohibits an open alcoholic beverage container in the passenger compartment of a vehicle regardless of whether it has actually been consumed in the vehicle.

Repeal Section (Sec. 13, Page 9, Lines 25-26)

This section repeals a number of statutes including several statutes enacted by the initiative. Several of the elements found in the statutes which are to be repealed are found in the defense section (section 5) of the bill. However, repealing some of the statutes enacted by the initiative, specifically AS 17.38.070, will likely have consequences outside of the criminal context.

Again, thank you for the opportunity to provide comments on SB 30 (29-LS023\N). Please let me know if I can be of any further assistance.

Sincerely,

CRAIG W. RICHARDS
ATTORNEY GENERAL

By: Kaci Schroeder
Kaci Schroeder
Assistant Attorney General

Encl: A Short History of Marijuana Law in Alaska

A Short History of Marijuana Law in Alaska

1975 Legislation

In 1975, the Alaska Legislature made changes to the state drug law. Ch. 110, SLA 1975. Among the changes were that personal possession by adults of one ounce or less in public, or possession of any amount of marijuana by adults in private, was made punishable only by a "civil fine of not more than $100." *See former* AS 17.12.110(e). Eleven days later, on May 27, 1975, the Alaska Supreme Court issued *Ravin v. State*, 537 P.2d 494 (1975).

In *Ravin,* the Court held that it was a violation of the Alaska Constitution's right to privacy to prosecute adults who possess or use marijuana in the privacy of their homes in amounts *not indicative of an intent to sell.*

1982 Legislation

In 1982, the legislature moved Alaska's drug laws into Title 11. They repealed the $100 civil fine and made it a class B misdemeanor to possess four ounces of marijuana or more in private or in public. It was a violation to possess less than four ounces in public. However, in light of *Ravin*, the legislature did not prohibit private possession of less than four ounces of marijuana for personal use by persons aged 19 or older.

1990 Legislation

In the general election of 1990, Alaska voters approved a ballot proposition that amended the statutes such that possession of *any amount of marijuana less than eight ounces* was a class B misdemeanor.

1998 and 1999 Legislation

In 1998, the voters passed a medical marijuana initiative. In the following year the Legislature rewrote the previous year's initiative to make it workable.

2000 and 2004

In 2000, Alaska voters turned down a ballot measure to legalize marijuana.

In 2004, Alaska voters turn downed a ballot measure to decriminalize and regulate marijuana.

2006 Legislation

In 2006, for the first time since 1982, the legislature amended the state drug laws.

The ACLU challenged portions of both the new AS 11.71.050 (prohibiting possession of under four ounces) and portions of the new AS 11.71.060 (prohibiting possession of less

than one ounce), but the superior court found that the ACLU had not argued that possession of more than one ounce was protected under *Ravin* or that "any plaintiff or ACLU member actually possesses more than one ounce of marijuana in the home." However, the superior court also found that the new 11.71.060, which criminalizes possession of less than one ounce, violated the Supreme Court's decision in *Ravin* and entered a preliminary injunction against the state enforcing the new law.

On April 3, 2009, the Alaska Supreme Court in *State v. ACLU* said the matter was not ripe on the issue of whether the 2006 law overturned the court's 1975 decision in *Ravin*. *State v. ACLU*, 204 P.3d 364 (2009). The preliminary injunction has been removed.

Presently, the 2006 legislation is the law of this state. It has not been challenged since the Supreme Court's decision.

January 28, 2015

Regarding: SB 30
Position: Oppose Unless Amended

Alaska Senate Judiciary/Alaska House Judiciary Committee
Attention Senator Lesil McGuire, Chair and Representative Gabrielle Ledoux, Chair
Pouch V
State Capitol
Juneau, Alaska 99801

Cc: Committee members

Dear Chairs McGuire and Ledoux and members of the committee:

With help from thousands of supporters, the Campaign to Regulate Marijuana Like Alcohol in Alaska led the campaign for Ballot Measure 2, which was approved by 53% of Alaska voters on November 3. This measure removes any ambiguity about the legality of adults 21 and older possessing and securely cultivating limited amounts of marijuana. It will also replace the underground, unregulated market for marijuana with a regulated system of taxpaying businesses.

Under Alaska law, for the next two years, the Legislature's ability to modify the initiative is restricted. We recognize that some changes to the criminal code may be desirable to harmonize it with Measure 2. And we understand that SB 30 is a working draft. But we are very concerned that, in its current form, SB 30 would remove fundamental protections from the voter-enacted law. Our comments are directed only at the content of the bill in its current form and not at the intent of the drafters. We understand the committee is open to changes to ensure the voters' will is effectuated, and we appreciate the opportunity to voice our concerns and suggestions.

I have outlined our specific concerns about SB 30 below. This version has a few revisions to the testimony I submitted earlier this week. The most substantive changes are on number 8.

The work before you is important and we thank you for it. Seventy percent of your colleagues in the Senate have come to Juneau from districts that voted yes on Ballot Measure 2. Your constituents are looking to you to successfully implement the initiative, and we hope to help you do so. We will be providing legal and policy expertise to state and local lawmakers, and representing the intent of the initiative when questions arise.

Sincerely,

Dr. Timothy Hinterberger
Chair, Campaign to Regulate Marijuana Like Alcohol in Alaska

Specific Concerns With the Current Version of SB 30

1. **In its current form, SB 30 would repeal Measure 2's comprehensive legal protections and replace them with a mere defense.** (Sec. 5 and Sec. 13)

   Measure 2 makes it lawful under Alaska state law and the laws of all of its political subdivisions for adults 21 and older to possess, give away to other adults, and cultivate marijuana for personal use, and for registered marijuana establishments and their staff to engage in the activity necessary to produce and sell marijuana to adults. It explicitly provides that such activity is not a civil or criminal offense, nor may it be a basis for seizure or asset forfeiture. Section 13 would strip these comprehensive legal protections and Section 5 would replace them with a mere defense.

   In its current form, the bill would eviscerate the initiative. Voters opted to make this conduct lawful, not just to create a defense to prosecution, which would allow for a person to be arrested, hauled into court, and forced to prove the defense. This would waste police and judicial resources and would thwart the purpose of the law. It is vital to the intent and workability of the law that adults and marijuana establishments have all of the protections listed in Measure 2 — that their conduct be explicitly lawful, that they be afforded protections from seizure and asset forfeiture, that they be protected from both municipal and state penalties, and that the protections apply to both civil and criminal penalties.

   In addition to removing important legal protections and replacing them with defenses, SB 30 would reduce the amount of marijuana adults could possess from all of the marijuana produced from their six plants to a mere ounce. (See: 17.38.020 (b))

   It is essential that 17.38.020 and 17.38.070 remain on the books, as approved by the voters of Alaska. However, additional revisions can and probably should be made to harmonize the criminal code with those protections. For example, each criminal statute for crimes involving marijuana and hashish could be amended to begin:

   > "Except as authorized **or exempted from criminal penalties by** AS 17.30 **or AS 17.38**,"

2. **In its current form, SB 30 creates a civil violation for adults who are 21 and older who merely display, but do not use, marijuana.** (Sec. 4, 11.71.065)

   The initiative prohibits public consumption while explicitly allowing display by individual adults. (17.38.020 (a), (d)) Adults over 21 should not be criminalized merely for the act of making publicly visible their legal marijuana or marijuana products. To align with the intent of Measure 2, this section should be amended to penalize only the public consumption of marijuana, not the display.

3. **In its current form, SB 30 makes it:**
   a. **a class C felony to manufacture or deliver preparations containing marijuana, including edible products, with an aggregate weight of more than an ounce;** (Sec. 1, AS 11.71.040(a))

b. **a class A misdemeanor to manufacture or deliver preparations containing marijuana, including edible products, with an aggregate weight of one ounce or less;** (Sec. 1, AS 11.71.050(a))
c. **a class A misdemeanor to possess preparations containing marijuana, including edible products, with an aggregate weight of more than an ounce but less than four ounces;** (Sec. 1, AS 11.71.050(a))
d. **a class B misdemeanor to possess preparations containing marijuana, including edible products, with an aggregate weight of one ounce or less.** (Sec. 3)

First, an exception must be made for marijuana establishments.

Second, as these provisions apply to individuals, such behavior by adults over 21 should not be a crime as long as it is in compliance with Measure 2. Under the initiative, adults who are at least 21 may legally possess and give away up to an ounce of marijuana outside of their home. As was noted, at the premises where they cultivate up to six marijuana plants, they may possess all of the cannabis produced by their plants — there is no limit on the quantity, not a one-ounce limit and not a four-ounce limit.

Third, many preparations containing marijuana, such as baked goods, can easily weigh more than an ounce while containing well under an ounce of marijuana itself. This is due to the weight of heavier, non-marijuana ingredients such as sugar and flour. The weight of such ingredients may not be counted toward the weight of marijuana under Measure 2. (17.38.900 (6)) This creates a prejudice against consumers who prefer to eat, rather than smoke, marijuana — particularly those who prefer to create their own marijuana-infused products in such safe and traditional methods as baking.

Furthermore, we recommend that even prosecutions of persons under 21 should not take into account the aggregate weight of the product. As stated above, the aggregate weight can often include baking ingredients, which make the final product much heavier than an ounce, if the marijuana-infused product is an edible. This is not a reflection of the potency of the product, and is not akin to possessing even an ounce of marijuana.

Finally, as was noted, adults are allowed to possess *all* of the marijuana produced by their six plants, not just one ounce. (17.38.020 (b)) They may also bake them into baked goods and other products at home.

4. **In its current form, SB 30 makes it a class A misdemeanor to manufacture a schedule VIA controlled substance through solvent-based extraction other than vegetable glycerin, with no exception for regulated product manufacturers/processors.** (Sec. 1, AS 11.71.050(a))

In its current form, this provision would criminalize such manufacture even by registered product manufacturers abiding by safety regulations, which would go against the intent of the initiative. We would not object, however, to imposing a ban on the home production of hash (17.38.020 (b)) products using methods that can be dangerous when conducted at a residence by a novice. An exception in such cases should still be made for safer

methods, such as vegetable glycerin-based extraction. In addition, a similar exception should be explicitly made for water-based extractions.

One option would be amending this section to end " or
(11) manufactures a schedule VIA controlled substance through a solvent-based extraction method using a substance other than **water or** vegetable glycerin, unless the person is **a marijuana products manufacturer or is acting in his or her capacity as an owner, employee or agent of marijuana products manufacturer."**

5. **In its current form, SB 30 makes it a class B misdemeanor for "uses and displays" of marijuana "not proscribed under AS 11.71.065."** (Sec. 3)

   This appears to apply to display of products by a retailer or display of more than an ounce by a minor, but it's not clear what else it might encompass. The campaign strongly recommends that this be stricken. The regulatory authority is better suited to handle any violation of rules for display by a retailer — and display shouldn't be prohibited as long as it's not visible from outside the store. For minors, they could simply be charged with possessing over an ounce if marijuana is displayed. The provision, as written, is too ambiguous.

6. **Under the current draft of SB 30, it would remain a class C felony to possess marijuana with "with reckless disregard" within 500 feet of schools, recreational or youth centers, and on a school bus.** (Sec. 1)

   This section must be removed or an exception for Measure 2 must be included (not just a defense). People traveling to and from their homes may pass within 500 feet of those locations with no intention of even approaching minors. Those residents should not be targeted, and their individual rights limited, for behavior they are responsibly undertaking in the privacy of their own homes. There is no similar law prohibiting possession of alcohol within that distance.

7. **In its current form, SB 30 does not make any exceptions allowing for individuals under 21 on the premises of a licensee.** (Sec. 4, 11.71.067)

   An exception should be made for individuals not in the direct employ of a marijuana establishment but whose occupations bring them onto the premises. For example, emergency first responders, building contractors or maintenance personnel, members of the press, and even elected officials may be under 21. They shouldn't be prohibited from doing their jobs on the premises of a licensed marijuana establishment due to their age if they don't handle marijuana and are not involved in any way with its production, processing or sale.

8. **In its current form, SB 30 re-schedules hashish, hash oil, and hashish oil to a Schedule VIA controlled substance, but lists them as substances that are separate from marijuana.**

   Treating hashish, hash oil, and hashish oil in the same manner as marijuana is consistent with the intent of Measure 2, and we agree with the attempt to harmonize the two.

Nonetheless, the way SB 30 has done so is likely to cause confusion. Currently, SB 30 provides: "Marijuana, hashish, and hash oil or hashish oil are schedule VIA controlled substances." However, hash is a concentrate of marijuana, and is therefore included in the definition of marijuana both in Measure 2 itself and the revised definition of marijuana under SB 30. (AS 11.71.900 (14)). There should not be a separate enumeration of hash or hash oil under Schedule VIA.

9. **In its current form, SB 30 criminalizes driving with a marijuana accessory or marijuana in one's vehicle if there is evidence it has been consumed in the vehicle, and it fails to include two of the exceptions that apply to alcohol.** (Sec. 12(e))

   In contrast to alcohol, cannabis is a medicine for many people. As drafted, SB 30 prohibits a patient from using cannabis even in a parked vehicle in which she was previously a passenger, where the driver is not present. We can imagine, for example, a seizure patient requiring a sublingual dose of cannabis oil. Given that many places will prohibit cannabis use, this may pose an extreme and unnecessary hardship.

   Furthermore, SB 30 omits two important exceptions that apply to alcohol. For alcohol — but not marijuana — an open container may be possessed on the other side of a partition from the driver (such as in a cab with a partition or a limo), and when the person is a passenger on transportation designed for 12 or more people (such as a shuttle or a bus). These exceptions should also be made for marijuana, which could be consumed in many forms, including non-smoked forms.

Pediatric Academy Now Says Medical Marijuana May Help Some Ill Kids

COLLAPSE STORY

BY BILL BRIGGS

Marijuana use should be decriminalized and federal officials should reclassify cannabis as a less dangerous drug to spur vital medical research, the leading group of U.S. pediatricians recommended Monday.

In an update to its 2004 policy statement on pot, the American Academy of Pediatrics (AAP) also recognized marijuana may be a treatment option for kids "with life-limiting or severely debilitating conditions for whom current therapies are inadequate."

That new stance is welcome news to some 200 families with ill children who recently moved to Colorado — where marijuana is legal for adults — in searches for last-ditch cures. Those remedies include the pot strain called Charlotte's Web, which anecdotally has been shown to control seizures in some kids.

"We don't want to marginalize families who feel like this is the only option for their child because of crisis," said Dr. Sharon Levy, chair of AAP's committee on substance abuse and assistant professor of pediatrics at Harvard Medical School. She was one of the statement's co-authors.

The Business of Pot Leads to Medical Marijuana Refugees

Media accounts of medical-marijuana refugees in Colorado have given doctors "reason to suspect" that cannabinoids — the chemical compounds secreted by cannabis flowers — might have anticonvulsant properties, Levy said.

Charlotte's Web, for example, is selectively bred to contain low levels of the cannabinoid THC, which causes people to feel high, but elevated levels of cannabidiol, or CBD, which does not have psychoactive effects. In one medical trial, CBD was shown to be possibly effective in treating people with Parkinson's disease, though more study is needed, scientists have said.

"We understand why a desperate parent might say, 'Look it's going to take 10 years to do this research.' We think that kind of compassionate use should be limited to children who are truly debilitated or at the end of life," Levy said in an interview with NBC News. Asked to list those debilitating illnesses, Levy cited severe seizure disorders.

The AAP remains otherwise opposed to marijuana use among children and adolescents through the age of 21, and it continues to stand against the broader legalization of pot.

"The black market dealer will sell to anyone. We don't. While we can agree with the academy that marijuana may be harmful to children, (cannabis) prohibition has failed to keep our children safe." — Michael Elliott, executive director of the Marijuana Industry Group.

But the pediatricians' group will now suggest that the federal government change marijuana from a Schedule I illegal drug (where it's classified along side heroin) to a Schedule II controlled substance, Levy said. The U.S. Drug Enforcement Administration

lists Adderall or Ritalin as examples of Schedule II drugs.

That change would facilitate a needed, new wave of cannabinoid research, the academy contends.

"There's never been a study of cannabinoids in any form that has included children. With that in mind, the AAP cannot endorse use of cannabinoid medication with children," Levy said. "We do note, though, there have been anecdotal cases that look promising. And that suggests there's a need for study.

"We support reducing the barriers to do that."

Nichole Gross plays with her son Chase, who is autistic and epileptic, at their home in Colorado Springs, Colo. Chase was moved from Chicago to Colorado so he could legally access a medical marijuana oil known as Charlotte's Web.

In addition, the academy said it now "strongly supports" the decriminalization of marijuana use — and encourages pediatricians "to advocate for laws that prevent harsh

criminal penalties for possession or use of marijuana."

The group's revised policies will be published in the March issue of the journal Pediatrics.

In 18 states, the punishments for marijuana possession have been made far less punitive, though pot use remains illegal. While those shifts are not applicable to adolescents, they "are intended to address and reduce the long-term effects that felony charges can have on youth and young adults," the academy noted.

Meanwhile, with medical-marijuana dispensaries operating legally in 23 states and the District of Columbia, the academy remains concerned that the shops are "very lightly regulated, and are run and staffed by people who don't necessarily have a lot of medical training," Levy said.

And the academy is aware of a slight increase in the number of U.S. kids who find and eat pot-infused candies and other treats sold at dispensaries.

During the first half of 2014 in Colorado, 14 children aged 3 to 7 were brought to emergency rooms to be treated for accidental ingestions of marijuana — compared to eight such cases during 2013 and an annual average of four cases from 2008 to 2012, reports the anti-legalization group Smart Approaches to Marijuana.

"A lot of that is quote-unquote medical marijuana that people are buying from medical marijuana shops in the form of cookies and candies, and kids are getting into that," Levy said.

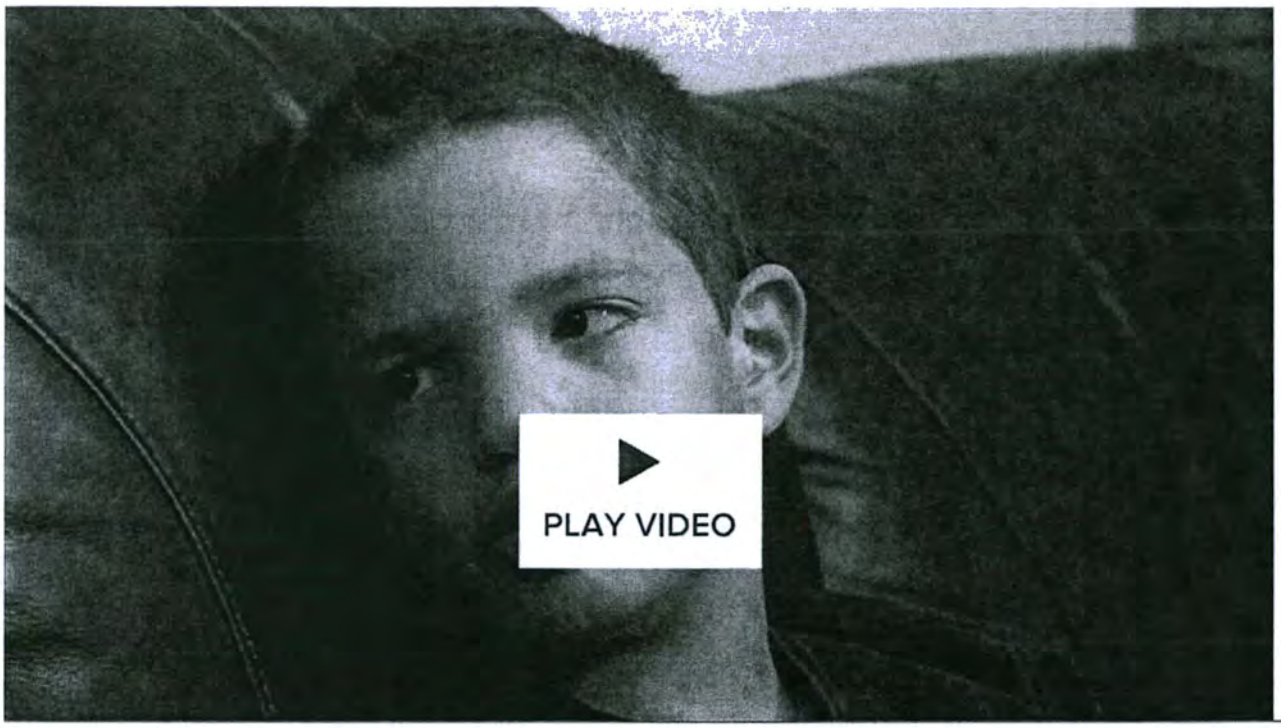
"We've even been seeing some lookalikes to popular products that are very attractive to kids — for example, instead of a Klondike Bar, there's a Krondike Bar," Levy said.

Dispensary employees do check the identifications of patrons to ensure they are 21 or older, and they routinely teach parents and other adults how to properly keep pot and cannabis-infused edibles out of the hands of children, said Michael Elliott, executive director of the Marijuana Industry Group, a trade association.

"Our industry doesn't sell to those who shouldn't have this product. Our industry is involved in numerous public education campaigns and we talk to our customers about responsible use and storage," Elliott said.

^ Top

ee with the academy that marijuana may be harmful to children, (cannabis) prohibition has failed to keep our children safe," Elliott added. "Alcohol and cigarettes are also harmful to children, but legal for adults to consume."



Medical refugees: Families leave homes to get medicines

First published January 25th 2015, 8:00 pm

BILL BRIGGS

Bill Briggs started as a contributing writer for NBCNews.com in 2006. He is responsible for breaking... Expand Bio

Marijuana Use Has Increased in Colorado: Study

COLLAPSE STORY

Colorado emerged as the state with the second-highest percentage of regular marijuana users as it began legalizing the drug, according to a new national study. The Denver Post reports the study by the National Survey on Drug Use and Health found about 1 out of 8 Colorado residents older than 12 had used marijuana in the past month. Only Rhode Island topped Colorado in the percentage of residents who reported using pot as often, according to the study.

The study averaged state-specific data over two-year periods. It found that, for the 2011-2012 period, 10.4 percent of Colorado residents 12 and older said they had used pot in the month before being surveyed. That number jumped to 12.7 percent in the 2012-2013 data. That means about 530,000 people in Colorado use marijuana at least once a month, according to the results. Nationally, about 7.4 percent of people 12 and older reported monthly marijuana use. That's an increase of about 4 percent.

The survey is among the first to quantify pot use in Colorado since late 2012, when voters approved legal pot use and possession for those over 21. But the survey did not analyze data from 2014, when recreational marijuana shops opened, which means it is not a good indication of the effect of commercial sales on marijuana use.

"I don't think this tells us about the long-term impacts of legalization," said University of California, Los Angeles, professor Mark Kleiman, who studies marijuana policy. The number of medical marijuana patients in Colorado rose over the same time period, so the results are not surprising, Kleiman said.

He told The Post that researchers will have a better idea about pot use in the first state to legalize recreational sales of the drug once they can focus on data showing how many people use pot daily.

IN-DEPTH

- Marijuana Re-Shapes Brains of Users, Study Claims
- Marijuana Tourists: Are More Flocking to Washington and Colorado?

- The Associated Press

First published December 27th 2014, 3:25 am

Recreational Marijuana and Health

Jay C. Butler, MD
Chief Medical Officer
Dept. of Health and Social Services

Short-Term Effects of Marijuana Use on Health

- Impaired short-term memory
- Temporary loss of coordination
  - Increase in motor vehicle accident risk when driving soon after using
  - THC levels of 2 to 5 ng/mL associated with impaired driving skills
- Altered judgment
- At high doses
  - Stimulation: agitation, paranoia, psychosis
  - Followed by sedation: can lead to respiratory insufficiency in children
  - No specific antidote for marijuana toxicity

Volkow ND, et al. *N Engl J Med* 2014; 370:2219-27
Hurley W, Mazor S. *JAMA Pediatr* 2013; 167:602-3

Long-Term Effects of Marijuana Use on Health

- Risk of addiction:
  - ~1 in 10 who use marijuana will become addicted
  - Risk increases with
    - Earlier age of initiation
    - Daily use (25% to 50%)
  - Cannabis withdrawal syndrome: craving, irritability, sleep difficulties, anxiety, and depression
- Regular use during adolescence associated with
  - Altered brain development
  - Poorer educational outcome
  - Cognitive impairment, lower IQ scores
  - Diminished life satisfaction

Volkow ND, et al. *N Engl J Med* 2014; 370:2219-27

Long-Term Effects of Marijuana Use on Health

- Association with use of other substances
- Psychiatric symptoms
  - Associated with anxiety and depression
  - Unmasking of schizophrenia (genetic predisposition)
- Increased symptoms of chronic bronchitis in persons who regularly smoke marijuana

Volkow ND, et al. *N Engl J Med* 2014; 370:2219-27

Effect on the Health System: Experience in Colorado

- Increased admissions to burn center
  - Butane used as solvent to extract THC
- Cyclic vomiting syndrome/marijuana hyperemesis syndrome
  - Associated with frequent use of high THC products
  - Abdominal pain, sweating, severe vomiting
- THC intoxication from edible products
  - 10-30 mg THC for intoxication
  - THC blood levels begin to rise ~30 minutes after consumption, peak at ~3 hours, and are clears ~12 after ingestion

31 people admitted to the hospital

Monte AA, et al. *JAMA* 2015; 313:241-1

Effect on the Health Care System: ED Visits for Ingestions, Children <12 Years Old, Denver, 2005-2011

Characteristic	January 1, 2005, Through September 30, 2009	October 1, 2009, Through December 31, 2011 *
No. of patients	790	588
Age, median (IQR), y	2.6 (1.6-3.0)	2.3 (1.5-3.6)
Male sex	449 (56.8)	334 (56.8)
Types of ingestions		
Acetaminophen	90 (11.3)	48 (8.2)
Antihistamine	43 (5.4)	32 (5.4)
Antidepressant	23 (2.9)	14 (2.3)
Antitussive	18 (2.2)	14 (2.3)
Marijuana exposures	0	14 (2.3)

* Medical marijuana laws changed Oct 2009; recreational use legalization Nov. 2012

Wang GS, et al. *JAMA Pediatr* 2013; 167:630-3

Many Caveats and Poorly Understood Issues

- Association does not prove causation
- Health effects may take years to manifest
- Effects of prenatal exposure on brain development
- Cancer risk: confounded by high rates of concurrent tobacco use
- Risk of heart attack and stroke
- Opportunities for effective public health education to reduce the health risks
- Second hand marijuana smoke exposure
- E-cigarettes (vaping)
- "Re-normalization" of smoking

Health Effects of Legalization

- Very little is known
- Depends on legalization's effects on:
  - Prevalence of use and age-specific prevalence of use
  - Frequency and duration of use
  - Modalities of use
  - Regulation, taxation, market forces

Caulkins JP, et al. *Considering Marijuana Legalization.* RAND Corp, 2015

THE STATE of ALASKA

GOVERNOR BILL WALKER

ALCOHOLIC BEVERAGE CONTROL BOARD

Marijuana Implementation Overview for Senate State Affairs

ABC Director Cynthia A. Franklin

January 27, 2015

Definitions

Define all important terms at outset

Important terms in AS 17.38 that are not defined

- "Edibles"
- "Public"
- "Possession"

Definition that needs clarification

- "Marijuana" (specifically portion stating that an oil is not marijuana)

Edibles

Several elements are important to assure safe recreational use of edibles

- Serving size: 5 or 10 mg THC content
- Limit on total THC per package
- Childproof packaging (many good solutions have been identified)
- Prohibition of adulterated products
- Limitation of products appealing to kids
- Warning labels (suggestion: symbol for those who are non English reading, such as the no-puffin we commonly know)

Edibles

- Edibles are 40% of the market in Colorado

- Due to smoking prohibitions, edibles are likely to be the most commonly purchased product for tourist consumption

Hash Oil and Solvent Extraction

- Manufacturing processes need to be regulated as closed loop systems by licensees only
- All other solvent extractions should be prohibited
- Local governments, land-use rules and zoning restrictions are some ways to handle this

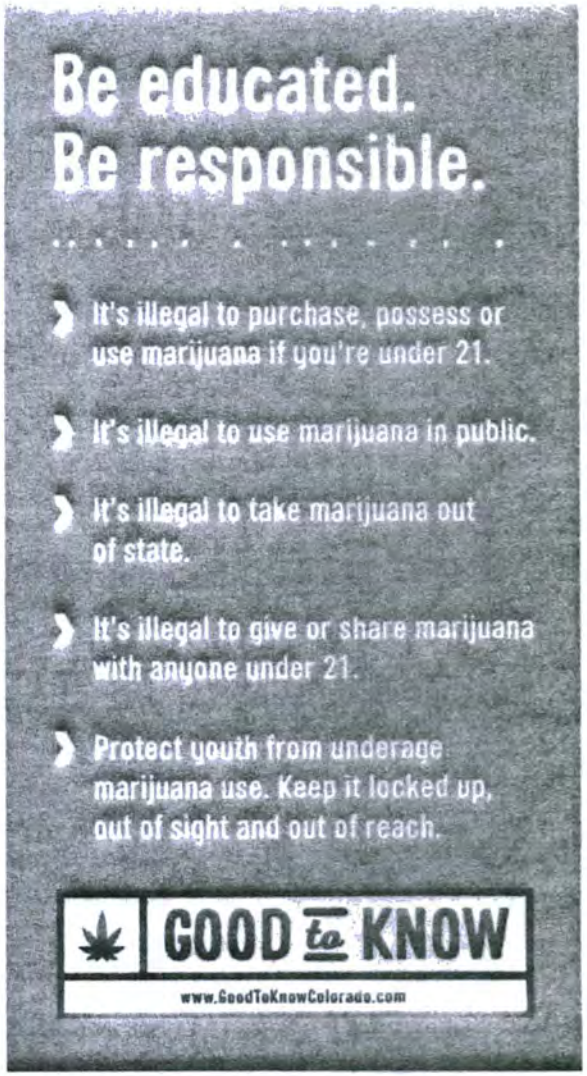
Labs

- Labs are essential to certify THC content for edible serving sizes
- CO advised to have labs up and running before edible licenses are issued
- Open question of where labs will come from, though we have heard there will be private interest from the industry as long as they are able to obtain state certification

Advertising and Education

- Reasonable advertising limits should be part of the rules
- Public education about rules and edibles is essential
- Colorado has offered to share its multi-million dollar "Good to Know" Campaign

Check it out at: www.GoodToKnowColorado.com



Local Government Control

- AS 17.38.110 provides for local control of marijuana.
- Local options for alcohol exist in Title 4 and give us a starting place for MJ local options in Title 17.
- Local governments in CO issue their own licenses in addition to state licenses. This is something to consider for AK.

Banking

- CO MJ industry is under-banked, not unbanked
- Oregon's M-Bank just began accepting deposits from CO businesses
- Cash acceptance issues will need to be addressed

License Selection Process

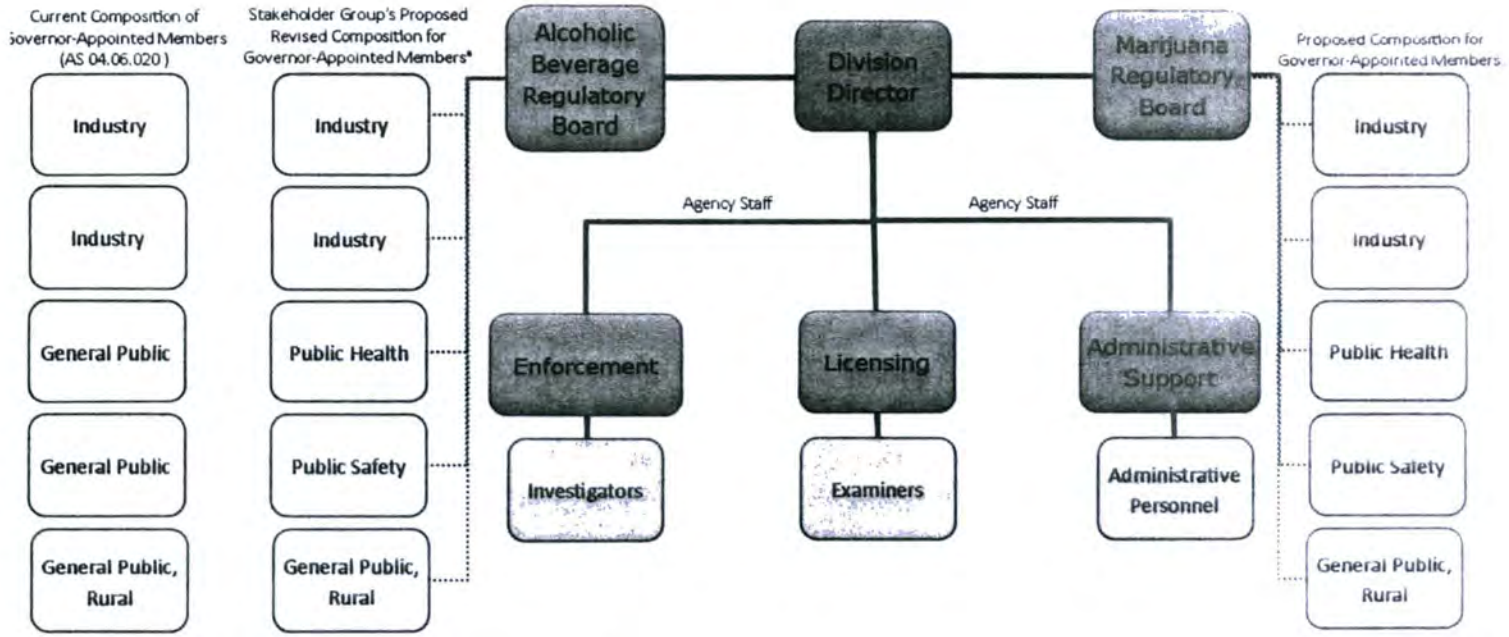
- Merit-based selection is proving to be best method- Nevada has a good model
- Strict limitation on number of licenses encourages black market and lawsuits
- Market correction is already occurring in CO with grower businesses failing due to depressed market for harvest
- If only best applicants are licensed, limits on numbers may not be necessary

Board Structure

- The ABC Board is a five member volunteer board that meets 5 times per year to act on liquor license issues
- A similar Marijuana Control Board that shares current ABC agency director and staff could utilize the experience, minimize additional staffing, and enforce licensing rules on both substances
- Existing ABC agency staff (licensing, enforcement and administrative personnel) are experienced in licensing and enforcing rules around liquor licenses

Board Structure

Proposed Organizational Structure:
Alcoholic Beverage Control Board with new marijuana responsibilities



** if the ABC Board director, considered a non-voting member of the board, has the same background as any of the sectors listed above (with the exception of general public, rural), the corresponding seat would become a general public member*

Questions?

LEGAL SERVICES

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Juneau, Alaska 99801-1182
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MEMORANDUM March 27, 2015

SUBJECT: Tetrahydrocannabinol and Hashish
(CSSB 30(FIN); Work Order No. 29-LS0231\T.9)

TO: Senator Pete Kelly
Attn: Joseph Byrnes

FROM: Hilary V. Martin
Legislative Counsel

Enclosed is the amendment you requested, which amends amendment T.2 to retain hashish on schedule VIA but places hash oil and tetrahydrocannabinol (THC) back onto schedule IIIA. Please be aware that hashish and hash oil may not be distinguishable in certain forms. It is also my understanding that hashish can have a higher THC level than hash oil. The amendment also repeals hash oil and THC from schedule VIA, which was an oversight in amendment T.2.

You asked why I did not replace THC on schedule IIIA with a more generic term, and whether retaining THC on schedule IIIA means that all marijuana is effectively banned. While THC is listed in schedule IIIA, marijuana is in schedule VIA. This means that marijuana and THC have to be treated as two different substances.[1] The definition for marijuana that will take effect on February 24, 2017, and the definition for marijuana in current statute reads:

> "[M]arijuana" means the seeds, and leaves, buds, and flowers of the plant (genus) Cannabis, whether growing or not; it does not include the resin or oil extracted from any part of the plants, or any compound, manufacture, salt, derivative, mixture, or preparation from the resin or oil, including hashish, hashish oil, and natural or synthetic tetrahydrocannabinol; it does not include the stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the stalks, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. . . .

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[1] This is further supported by the lead in language in AS 11.71.160(f), which states: "Schedule IIIA includes, unless specifically excepted or **unless listed in another schedule** . . . ."

The definition of marijuana specifically excludes hashish, hashish oil, and natural or synthetic THC, along with any other compound from the resin or oil. With THC listed on schedule IIIA, and marijuana on schedule VIA, this means that the seeds, leaves, buds, and flowers of the plant are all marijuana, but any resin or oil extracted from the plant, or any compound, manufacture, salt, derivative, mixture, or preparation from the resin or oil would not be marijuana. The natural interpretation of these definitions and the listing of THC on schedule IIIA, while marijuana is on schedule VIA, is that marijuana is the plant and parts of the plant, while any sort of process or preparation from the resin or oil would be something other than marijuana -- either hashish, hash oil, or THC.

Deleting hash oil and THC from schedule VIA and placing them back on schedule IIIA would not effectively prohibit all forms of marijuana, even though THC is the active ingredient in marijuana. However, any preparation from the resin or oil, except for hashish, would be a schedule IIIA substance.

If I may be of further assistance, please advise.

HVM:lem
15-202.lem

Enclosure

CRCL

Coalition for Responsible Cannabis Legislation

March 29, 2015

Esteemed members of the Alaska Senate;

In the months leading up to the election last fall, my colleagues and I engaged in numerous debates, panel-discussions, and interviews. In the course of the current legislative session I have offered testimony to multiple committees on several bills and authored a considerable body of analysis and commentary.

In all cases and at all times I have endeavored to be forthright, honest, and reasonable. At no time have I ever attempted to sway anyone's opinion with misinformation or by stating something was true when I knew it not to be. In many cases I have readily conceded the validity of concerns raised and we have offered legislative and regulatory solutions intended to address those legitimate concerns.

Therefore, I hope you can appreciate my profound dismay at recent efforts to derail an otherwise honest dialog with misinformation, half-truths, and fear-based propaganda – all designed to undermine a voter initiative and ensure that it can never be fully successful. On the accompanying pages I have highlighted a few examples.

The rulemaking process has barely even begun and I believe that most of the legitimate issues raised will be adequately addressed by the rules that a legalized industry must abide by. I see no legitimate reason that the scope or schedule of Ballot Measure 2 should be changed at this time – before the rulemaking process is complete.

I urge the members of the Senate to reject the scare-tactics and make every reasonable effort to allow a legitimate marijuana industry to develop in Alaska, undiluted and in accordance with the letter and intent of this voter initiative – with no expiration date. The voters deserve that consideration.

In turn, I can promise that I, and other advocates and responsible entrepreneurs will make every effort to ensure that a legitimate industry adheres to reasonable guidelines and practices so there will never be a need for such a repeal.

Sincerely,

Bruce Schulte
Coalition for Responsible Cannabis Legislation

CRCL

Coalition for Responsible Cannabis Legislation

Issues and Myths promoted by Marijuana Prohibitionists – and some related facts.

Exploding hashoil devastates homes in states with legal marijuana

Myth: A recently distributed picture of a burning house with the caption "Hash oil explosions in states where marijuana is legal". The clear implication is that Alaska must ban hashoil lest our homes burst into flames.

Figure 1 - Exhibit distributed on Senate floor - March 27 2015

Fact: Hashoil is not explosive or volatile. Neither is Hash.

Fact: The use of butane as a solvent to extract hashoil – without the use of appropriate equipment, can be very hazardous and has led to fires or explosions. That is exactly why CRCL suggested statutory language making it unlawful to use a volatile or explosive gas in the home in this manner.

Fact: The use of closed-loop extraction equipment, operated by trained personnel, in suitable facilities is a common industrial process used around the country to produce extracts of Vanilla, Lavender, Peppermint, and even Hashoil - all without spontaneous fires or explosions.

Let us be clear on this: People are encouraged to produce their own hashoil at home because they can't just go buy it at a store. Home production of hashoil is likely to persist in markets where hashoil is not available in retail stores – in states where hashoil and other extracts are illegal to sell.

If we really want to discourage the hazardous practice of "open-blast" butane hashoil extraction then we should do everything possible to remove the incentive to do so by ensuring that regulated businesses are able to produce and sell a higher-quality product at lower cost in licensed retail stores.

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Alaska is about to be deluged with marijuana-infused Gummi Bears [sic]
Myth: Recently distributed photographs show THC-infused edible products, some of which were intentionally produced or packaged to resemble child-friendly products. The implication was that Alaska will be inundated with THC-infused Gummi Bears unless we ban all edible products.

Figure 2 - Infused edible products (many of which will likely not be allowed in Alaska)

Fact: CRCL is already on-record (House Judiciary March 12) as supporting a prohibition on intentionally child-friendly marijuana products and "Adulterated Edibles" (familiar products, infused with THC and repackaged for sale). The director of the ABC board has also stated this as a likely position of a future marijuana control board.

Fact: This was one of the Prohibitionists favorite scare-tactics prior to the election and in every debate CRCL and other industry advocates agreed that reasonable guidelines should be developed so as to avoid any marijuana products that were intentionally enticing to children.

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Coalition for Responsible Cannabis Legislation

Single-serving cookies with 350mg of THC

Myth: Some would have you believe (in statements to Senate Finance on March 13) that a single cookie with 350mg of THC could have all manner of dire consequences for an unsuspecting consumer.

Fact: CRCL and the ABC Director are already on record as supporting a maximum single-serving potency of **10mg** of THC – a fraction of what some have suggested would be the norm.

Fact: Colorado has recently established a maximum single single-serving concentration of 10mg THC as well.

Packaging

It has been suggested that marijuana and related products will be overly accessible to young children.

Fact: CRCL has already proposed child-resistant packing and "Exit Packaging" for retail stores. Other states have implemented similar requirements.

It is worth noting that national standards for child-resistant packaging of pharmaceuticals stop at a child-resistant cap on a plastic bottle. This has become the accepted standard of protection for powerful prescription drugs that can, in some cases, be fatal if taken in even modest quantity.

Voter Intent

It has been suggested that the voters didn't know what they were voting for last November. I challenge that assertion. Every registered voter received a voter pamphlet containing the full text of Ballot Measure 2. If one assumes that voters made their choice without benefit of the information in that pamphlet, or without regard to public dialog – then are we to conclude that they had no idea what they were doing when voting for any candidate or issue? The exact same parameters apply.

The Lieutenant Governor hosted multiple hearings around the state, and there were multiple debates that were well-attended and broadcast all over the state. The details of marijuana in it's various forms and extracts were discussed in extraordinary detail.

So, to suggest that over 150,000 Alaskans simply had no idea what they were voting for is somewhere between disingenuous and remarkably arrogant. Some estimates place marijuana usage amongst Alaskans at between 15%-18% (roughly 120,000-130,000 people). I suspect a lot of them voted Yes on ballot measure 2 and that they understood fully the differences between marijuana leaf, flower, hash, and hashoil.

Coalition for Responsible Cannabis Legislation

Summary

It is my considered opinion that any legislative effort to sunset portions of this voter initiative at this time would be premature.

At present we have little more information to work from than the voters did last November. No regulatory board has had a chance yet to define the rules under which a legitimate marijuana industry will operate – even though many of us have agreed, in principle, on what some of those rules should look like.

Why, then, would we even consider making fundamental changes to this voter initiative, timed to take effect at the earliest possible date (February 2017)?

Such measures can only be viewed, by reasonable people, as a preemptive repeal of Ballot Measure 2.

-CRCL is an Alaska-based non-profit dedicated to the development of sensible marijuana regulations in Alaska-

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MEMORANDUM March 19, 2015

SUBJECT: Tetrahydrocannabinols
(CSSB 30( ); Work Order No. 29-LS0231\X.56)

TO: Senator Click Bishop
Attn: Pete Fellman

FROM: Hilary V. Martin
Legislative Counsel

You have asked about amendment X.56, and specifically whether it amends the legality of possessing any amount of tetrahydrocannabinol (THC).

Amendment X.56 amends schedule IIIA to place hashish, hash oil, and THC back in the schedule. It amends the definition of marijuana so that hashish, hash oil, and THC are excluded from the definition of marijuana, repeals the sections that place hashish, hash oil, and THC into schedule VIA, and makes all of the changes effective on February 24, 2017.

The amendment will, essentially, revert hashish, hash oil, and THC back to how they were treated before the changes made in SB 30, which move them into schedule VIA. In current statute, AS 11.71.160(f), schedule IIIA, contains hashish, hash oil, and THC.[1] Similarly, the definition of marijuana in AS 11.71.900(14) specifically excludes hashish, hashish oil, and natural or synthetic THC from the definition of marijuana. This means that even though THC is the active ingredient in marijuana, it has to be something different from "the seeds, and leaves, buds, and flowers of the plant (genus) Cannabis." There is no definition of THC in statute or in the amendment. Presumably, it refers to the active ingredient in the plant of the (genus) Cannabis that has been synthesized or otherwise extracted from the plant.

Under the general rules of statutory construction, courts will attempt to reconcile seemingly conflicting provisions. Because THC is treated and defined separately from the marijuana plant under AS 11.71.900(14) for criminal law purposes, a court is likely to find that THC must be in a form other than plant form for schedule IIIA enforcement actions. However, amendment X.56 excludes from the definition of marijuana, for both criminal and regulatory purposes, any "compound, manufacture, salt, derivative, mixture, or preparation from the resin or oil" of

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[1] Schedule IIIA also includes other synthetic cannabinoid or THC substances, including parahexyl, dronabinol (marinol), nabilone, and a group of substances referred to as spice. AS 11.71.160(f)(4)(16). These substances are not addressed by SB 30.

marijuana ghash, hash oil, and natural or synthetic THC), all of which are included in the definition of "marijuana" under the initiative law[2] but excluded from the current criminal law definition.[3] In addition, as you correctly pointed out, schedule IIIA controlled substances prohibit "any material" that contains "any quantity" of THC, which could mean products made from resins or oil from the marijuana plant that contain THC. In this sense, the amendment eliminates the potential under the initiative for regulating some commercial marijuana products and makes possession of, or manufacture, delivery, or possession with the intent to manufacture or deliver, any amount of those products a crime.

Therefore, with adoption of this amendment, on February 24, 2017, any possession, manufacture, delivery, or possession with the intent to manufacture or deliver, hashish, hash oil, or THC will be subject to misdemeanor and felony penalties provided for in AS 11.71.010 - 11.71.060 that refer to schedule IIIA controlled substances. "Seeds, and leaves, buds, and flowers of the plant" are within the definition of marijuana, and a person possessing these would be subject to the crimes applicable to schedule VIA or usable marijuana in AS 11.71.010 - 11.71.071.

If I may be of further assistance, please advise.

HVM:dla
15-191.dla

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[2] AS 17.38.900(6).

[3] AS 11.71.900(14).

Preliminary Considerations for Implementation of AS 17.38
Prepared for the Alcoholic Beverage Control Board and Public
February 12, 2015

Intent: The ABC Board is charged in AS 17.38 with implementing rules regarding changes in marijuana law and policy voted for by the people of the State of Alaska on November 4, 2014. The purpose of this document is to provide a common frame of reference, identify major policy issues, and where feasible, make recommendations as to implementation and policy decisions.

Goals for Regulation:

The ABC Board or Marijuana Control Board should identify goals and measure regulations against those goals as the regulations are developed. The following goals are identified at this time:

- Keep marijuana away from underage persons;
- Protect public health and safety;
- Respect privacy and constitutional rights;
- Prevent diversion of marijuana, and
- Degrade illegal markets for marijuana

Board Authority:

The ABC Board is the default authority for promulgating regulations relating to AS 17.38. However, AS 17.38.080 provides the legislature the opportunity to create a separate Marijuana Control Board. After attending and testifying at numerous hearings regarding board authority, the Walker administration has indicated it will be taking on the board issue in the form of a governor's bill. We anticipate that the bill will create a separate 5-member volunteer board and direct the current ABC agency and staff to serve as agency and staff for both boards, with a modest increase in staff at the agency. The legislature appears to generally support this approach although the fate of the bill will not be clear until its introduction and debate. Advantages of this approach are as follows:

- Licensing and enforcement staff with significant experience in regulating dangerous substance (alcohol) could bring that experience to bear in regulating marijuana
- Director and management team have worked on marijuana issues since bill passage and will bring experience from that learning process, from testifying before legislature regarding marijuana and from fielding questions from public and media since bill passage.
- Agency staff has significant experience with regulations making process.
- Sharing licensing and enforcement employees represents significant fiscal savings.
- Two separate five member boards eliminate potential conflicts between industries.
- Meet required timeline to complete adoption of regulations, versus need to create an entirely new agency.

Background: The main scientific components of marijuana are:

- Delta 9 Tetrahydrocannabinol (THC) – the main psychoactive substance found in marijuana
- 11-Hydroxy-THC – the main psychoactive metabolite of THC formed in the body after marijuana consumption

- 11-nor 9 Carboxy THC – the main secondary metabolite of THC, which is formed in the body after marijuana is consumed. It is not psychoactive
- Cannabidiol (CBD) – is considered to have a wider scope of medical applications than THC
- Cannabinol (CBN) – a mildly physiologically active principle in Cannabis with medical applications

Definitions: Clear and consistent definitions are critical to orderly regulation and enforcement of marijuana laws. While AS 17.38 contains a list of definitions, the definition of the term "marijuana" raises some questions and the new statute contains many undefined terms, such as "edibles".

- Recommended definition of marijuana: "marijuana" means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. "Marijuana" does not include fiber produced from the stalks, cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products ("Salts" and "oil" removed from AS 17.38.900(6))

- Recommended definition of marijuana concentrate: "Marijuana concentrate" means resin, oil, wax, or any other substance derived from the marijuana plant by any method which isolates the THC-bearing resins of the plant.

- Recommended definition of marijuana product: "Marijuana product" means concentrated marijuana and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

- Recommended definition of Public: "Public" for purposes of 17.38.040 has the meaning given to the term "public place" in AS 11.81.900(53).

- Recommended definition of Edibles: "Edible marijuana product" means any marijuana product which is intended to be consumed orally, including but not limited to, any type of food, or drink. Edible marijuana products do not include adulterated food or drink products.

- Recommended definition of adulterated: "Adulterated food or drink product" means a product which is intended to be consumed orally and which existed without marijuana in a form ready for consumption to which marijuana was subsequently added by any process. Adulterated food or drink products do not include raw ingredients which are combined with marijuana in a manufacturing process.

Exclusions: Statutorily excluding adulterated food or drink products would increase the public safety of legalized marijuana. Colorado's most contentious marijuana edibles would be unsellable in Alaska markets by making this statutory change. Adulteration is a process of removing a market ready food product from its packaging and spraying concentrated marijuana on the product. The product is then repackaged and sold as a marijuana "infused" product, or MIP. Many of the adulterated products sold in Colorado blatantly appeal to children, such as Little Debbie's or Haribo Gummy Bears sprayed down with a marijuana concentrate.

Adulterated Edible Products

Edibles: Emulating Colorado's new rules (eff. 2/1/15) concerning edibles, including serving sizes and child proof packaging, will help Alaska avoid many of Colorado's bad outcomes around edibles. These rules should be established by the Control Board (ABC or Marijuana Control Board) through a public regulations process rather than set in statute. Regulations related to edibles should cover issues such as:

- Serving size- recommend 5 mg of active THC (single serving)
    - Recommend that the maximum serving size of an individual edible marijuana product be 50 milligrams of THC (maximum 10 servings per package). Require that they be marked or scored to illustrate portions and require re-sealable packaging to child proof standards for items containing more than 1 serving.


Scored Serving Sizes with markings

Medical Marijuana: AS 17.38.130 specifically states that nothing in the act is intended to impact the medical marijuana law set forth in AS 17.37.

- Recommend that the board does not separate medical marijuana or declare some marijuana to be medical and other marijuana to be recreational. Differentiating between medical and recreational marijuana has caused many regulatory issues for the states that have done so. Alaska enjoys a distinct advantage in achieving consistent regulation by not differentiating separate rules for medical marijuana and recreational marijuana. Creating one set of rules for all marijuana will result in the most consistently enforceable rules that are safest for the public.

Packaging: All marijuana products sold by a retailer or created by an edibles manufacturer should be required by statute to meet stringent packaging requirements. Further regulation should be left to the board.

- Recommend Child-Resistant requirements meaning special packaging that is:
    - Designed or constructed to be significantly difficult for children under five years of age to open and not difficult for normal adults to use properly as defined by 16 C.F.R. 1700.20.
    - Opaque so that the packaging does not allow the product to be seen without opening the packaging material.

- Re-sealable back to childproof for any product intended for more than a single use or containing multiple servings.

- Recommend requiring warning labels that detail things such as:
  - How many servings
  - How much total Active THC
  - Keep out of Reach of Children

- Recommend developing symbol for all marijuana products as to aide recognition by non-English reading persons. Similar in theory to:

Local Control: AS 17.38.110 provides for local control of marijuana. Local options for alcohol exist in Title 4 and give us a starting place for MJ local options in Title 17.

- Recommendation- Consider a similar "menu" of options to offer local governments when it comes to commercial marijuana in their respective community, recognizing that no two communities in Alaska are the same.

Advertising and Education: Reasonable advertising limits should be part of the rules and public education about rules is essential, this can be accomplished via an intergovernmental effort within the administration and by joining with local governments.

- Recommendation- Take Colorado up on their offer to share with us their incredibly effective "Good to Know" public awareness campaign for little to no cost.

License Selection Process and License Types:

Relevant definitions:

- "Marijuana cultivation facility" means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.
- "Marijuana product manufacturing facilities" means an entity licensed to purchase marijuana; manufacture, and package marijuana products; and sell marijuana and marijuana products to other marijuana manufacturing facilities and to retail marijuana stores, but not to consumers.
- "Retail marijuana stores" means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

- Recommend that the awarding of licenses be based on a strict merit selection system as opposed to lottery or population density model. Avoiding population limitations at a state level will likely mean that local governments will establish their own pop/density based rules, which would be appropriate for local control.

  - Recommend there be a matrix of qualification, similar to that used in fair hiring practice. This matrix could be built by the regulatory agency. It can include things such as:

    1. Residency requirements
    2. Suitability requirements
    3. Security requirements
    4. Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under the age of twenty-one
    5. Health and safety regulations and standards for the manufacture of marijuana products and the cultivation of marijuana

  - Recommend the following license types:

    1. Cultivation license- Tiers can be offered based on square footage of facility or expected output, thus changing the fee schedule
       - Consider small growers license coupled with broker's license
    2. Manufacturing license
       - Includes processing of concentrates and edibles
    3. Retail license
       - Includes sale of flower/bud, edibles, tinctures, salves, marijuana products
    4. Laboratory License
       - Private labs for testing with certification by state authority

Enforcement:

- Discuss marijuana rules outside of commercial licenses. Police and troopers may struggle to understand what is legal and what is not legal for marijuana. These difficulties will be exacerbated if marijuana remains in the state controlled substances schedule. Alaska legislators are evaluating if they are going to keep marijuana as both a controlled substance and a regulated substance. By having the rules in two different places, the frustration and confusion effect for law enforcement officers is high.

- For marijuana to be truly regulated like alcohol, the substance should be removed from the controlled substances schedule and be subject to a single title containing all of the marijuana statutes and regulations in one place. The current versions of HB 79 and SB 30 accomplish this change.

- Recommend that ABC or Marijuana Control Board be granted the same authority over marijuana enforcement that the ABC has over alcohol. AS 17.38 in its current form grants the ABC or Marijuana Control Board the authority to make rules around the licensing of marijuana but does not provide the authority to enforce the rules or to enforce the law regarding black market operations. It is imperative that if there are to be marijuana enforcement officers employed by the regulatory agency that they have the statutory authority to enforce not only licensing rules but all laws regarding marijuana.

Other considerations:

Testing: Marijuana food product hygiene requirements and safety should be reflective of other commercial kitchen requirements. Testing of products by privately owned labs should be required, and the Department of Environmental Conservation could be tasked with approving or certifying private labs.

Concentrate Manufacturing: There are a wide variety of methods utilized in hash oil and concentrate manufacturing processes. Note: Hash/hashish/oil/concentrate is not synonymous with butane extraction. Butane extraction is simply one method of extraction and hash or hash oil is a product that results from extraction. Marijuana concentrates are specifically legalized in AS 17.38, but regulations can require a closed loop manufacturing process for licensees that will reduce the risks of explosions. Please note that depending on the authority given to the ABC or Marijuana Control Board (if one is created) regulation of solvent processing of marijuana outside of licensed premises may be the domain of criminal law or local governing bodies. Closed loop systems at licensed commercial facilities could be safely regulated similarly to any explosive vulnerable business, i.e. car painting companies, helium providers, etc.

Driving: Other state departments such as Law are working on the issue of driving under the influence of marijuana. They may recommend setting reasonable toxicology levels of impairment with regards to driving while impaired. Other legalized states as well as the US DOT have rules in place regarding marijuana limits based on blood testing which Law or the legislature may use as a starting place for developing DUI standards.

SENATOR
LESIL MCGUIRE
CHAIR

State Capitol, Room 121
Juneau, Alaska 99801-1182
(907) 465-6443

29th Alaska State Legislature

SENATOR
JOHN COGHILL
VICE-CHAIR

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Senate Judiciary Committee

Memo

To: Senate Judiciary Committee Members
From: Jeff Pickett Attorney at Law
Date: February 18, 2015
Re: Use of the Phrase "Notwithstanding Any Other Rule or Provision of Law"

- How it's used/interpreted
  - It is used 7 times in the Initiative; the current version of SB 30 has removed the phrase. Whether to include it has become an issue.
  - Courts refer to the phrase as a "term of art" designed to implicitly repeal or amend existing, conflicting laws
  - Important to note: the phrase cannot bind a future legislature from repealing the phrase
  - Drafters strongly disfavor it—possibility for unintended consequences; not as elegant; although it still is used, especially in certain contexts like trade law.
  - Courts acknowledge the breadth of the literal meaning, but at the same time, in most of the cases I've reviewed they look at the intent of the legislature and will often restrict the phrase.
    - Did the legislature intend a literal meaning? Did it intend a more circumscribed application of the phrase?
    - Courts will attempt to harmonize, whenever possible, other statutory language that might seem to conflict with the "notwithstanding" provision.
    - The Alaska Supreme Court has construed the phrase according to its "plain meaning" and found conflicting law to be barred by the phrase.
    - On the other hand, the Alaska Supreme Court has also ruled that meaning of the phrase can be limited by context, common sense, and legislative history.
  - At the end of the day, the phrase will be construed according to the principles of statutory construction set forth by the Alaska Supreme Court.

- Pros
  - Reflects language voters voted in favor of—acknowledges their intent.
  - Trumps all laws in conflict: civil, regulatory, local. Concern is that without the phrase, conflicting laws might inadvertently not be

amended in the current process and render parts of the Initiative ineffective.
  - Example: AS 10.20.360 – liquidation of a corporation's assets if actions of directors or officers are illegal.
  - Belt and suspenders—marijuana illegal for more than half a century in our statutes and permeates them. Might miss something in this go-around.
  - Time crunch of getting this bill out makes it more likely something might be missed and harder to specify all laws which SB 30 preempts.
  - Phrase used elsewhere in AK statutes.
  - Phrase used in Colorado's marijuana law, so there is precedent for it.

- Cons
  - Not considered effective drafting by authors of style manuals
  - May be overbroad—the Alaska Supreme Court has ruled that the phrase can abrogate conflicting common law. Would a civil claim for nuisance withstand the phrase?
  - May cause court to interpret SB 30 as trumping laws Legislature did not intend to trump
  - The phrase is arguably superfluous, to the extent that the courts are empowered to review legislative history and employ other issues of statutory construction to determine whether the Legislature intended SB 30 to trump a conflicting law.
  - The personal use protections are also constitutionally protected, so the "notwithstanding" language is arguably superfluous with respect to personal use and possession.

"An Act to tax and regulate the production, sale, and use of marijuana."

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ALASKA:

***Section 1.** AS 17 is amended by adding a new chapter to read:

Chapter 38. The regulation of marijuana

Sec. 17.38.010. Purpose and findings.

(a) In the interest of allowing law enforcement to focus on violent and property crimes, and to enhance individual freedom, the people of the state of Alaska find and declare that the use of marijuana should be legal for persons 21 years of age or older.

(b) In the interest of the health and public safety of our citizenry, the people of the state of Alaska further find and declare that the production and sale of marijuana should be regulated so that:

(1) Individuals will have to show proof of age before purchasing marijuana;

(2) Legitimate, taxpaying business people, and not criminal actors, will conduct sales of marijuana; and

(3) Marijuana sold by regulated businesses will be labeled and subject to additional regulations to ensure that consumers are informed and protected.

(c) The people of the state of Alaska further declare that the provisions of this Act are not intended to diminish the right to privacy as interpreted by the Alaska Supreme Court in *Ravin v. State of Alaska.*

(d) Nothing in this Act proposes or intends to require any individual or entity to engage in any conduct that violates federal law, or exempt any individual or entity from any requirement of federal law, or pose any obstacle to federal enforcement of federal law.

Sec. 17.38.020. Personal use of marijuana.

Notwithstanding any other provision of law, except as otherwise provided in this chapter, the following acts, by persons 21 years of age or older, are lawful and shall not be a criminal or civil offense under Alaska law or the law of any political subdivision of Alaska or be a basis for seizure or forfeiture of assets under Alaska law:

(a) Possessing, using, displaying, purchasing, or transporting marijuana accessories or one ounce or less of marijuana;

(b) Possessing, growing, processing, or transporting no more than six marijuana plants, with three or fewer being mature, flowering plants, and possession of the marijuana produced by the plants on the premises where the plants were grown;

(c) Transferring one ounce or less of marijuana and up to six immature marijuana plants to a person who is 21 years of age or older without remuneration;

(d) Consumption of marijuana, except that nothing in this chapter shall permit the consumption of marijuana in public; and

(e) Assisting another person who is 21 years of age or older in any of the acts described in paragraphs (a) through (d) of this section.

Sec. 17.38.030. Restrictions on personal cultivation, penalty.

(a) The personal cultivation of marijuana described in AS 17.38.020(b) is subject to the following terms:

(1) Marijuana plants shall be cultivated in a location where the plants are not subject to public view without the use of binoculars, aircraft, or other optical aids.

(2) A person who cultivates marijuana must take reasonable precautions to ensure the plants are secure from unauthorized access.

(3) Marijuana cultivation may only occur on property lawfully in possession of the cultivator or with the consent of the person in lawful possession of the property.

(b) A person who violates this section while otherwise acting in compliance with AS 17.38.020(b) is guilty of a violation punishable by a fine of up to $750.

Sec. 17.38.040. Public consumption banned, penalty.

It is unlawful to consume marijuana in public. A person who violates this section is guilty of a violation punishable by a fine of up to $100.

Sec. 17.38.050. False identification, penalty.

(a) A person who is under 21 years of age may not present or offer to a marijuana establishment or the marijuana establishment's agent or employee any written or oral evidence of age that is false, fraudulent or not actually the person's own, for the purpose of:

(1) Purchasing, attempting to purchase or otherwise procuring or attempting to procure marijuana or marijuana products; or

(2) Gaining access to a marijuana establishment.

(b) A person who violates this section is guilty of a violation punishable by a fine of up to $400.

Sec. 17.38.060. Marijuana accessories authorized.

Notwithstanding any other provision of law, it is lawful and shall not be an offense under Alaska law or the law of any political subdivision of Alaska or be a basis for seizure or forfeiture of assets under Alaska law for persons 21 years of age or older to manufacture, possess, or purchase marijuana accessories, or to distribute or sell marijuana accessories to a person who is 21 years of age or older.

Sec. 17.38.070. Lawful operation of marijuana-related facilities.

(a) Notwithstanding any other provision of law, the following acts, when performed by a retail marijuana store with a current, valid registration, or a person 21 years of age or older who is acting in his or her capacity as an owner, employee or agent of a retail marijuana store, are lawful and shall not be an offense under Alaska law or be a basis for seizure or forfeiture of assets under Alaska law:

(1) Possessing, displaying, storing, or transporting marijuana or marijuana products, except that marijuana and marijuana products may not be displayed in a manner that is visible to the general public from a public right-of-way;

(2) Delivering or transferring marijuana or marijuana products to a marijuana testing facility;

(3) Receiving marijuana or marijuana products from a marijuana testing facility;

(4) Purchasing marijuana from a marijuana cultivation facility;

(5) Purchasing marijuana or marijuana products from a marijuana product manufacturing facility; and

(6) Delivering, distributing, or selling marijuana or marijuana products to consumers.

(b) Notwithstanding any other provision of law, the following acts, when performed by a marijuana cultivation facility with a current, valid registration, or a person 21 years of age or older who is acting in his or her capacity as an owner, employee or agent of a marijuana cultivation

facility, are lawful and shall not be an offense under Alaska law or be a basis for seizure or forfeiture of assets under Alaska law:

(1) Cultivating, manufacturing, harvesting, processing, packaging, transporting, displaying, storing, or possessing marijuana;

(2) Delivering or transferring marijuana to a marijuana testing facility;

(3) Receiving marijuana from a marijuana testing facility;

(4) Delivering, distributing, or selling marijuana to a marijuana cultivation facility, a marijuana product manufacturing facility, or a retail marijuana store;

(5) Receiving or purchasing marijuana from a marijuana cultivation facility; and

(6) Receiving marijuana seeds or immature marijuana plants from a person 21 years of age or older.

(c) Notwithstanding any other provision of law, the following acts, when performed by a marijuana product manufacturing facility with a current, valid registration, or a person 21 years of age or older who is acting in his or her capacity as an owner, employee or agent of a marijuana product manufacturing facility, are lawful and shall not be an offense under Alaska law or be a basis for seizure or forfeiture of assets under Alaska law:

(1) Packaging, processing, transporting, manufacturing, displaying, or possessing marijuana or marijuana products;

(2) Delivering or transferring marijuana or marijuana products to a marijuana testing facility;

(3) Receiving marijuana or marijuana products from a marijuana testing facility;

(4) Delivering or selling marijuana or marijuana products to a retail marijuana store or a marijuana product manufacturing facility;

(5) Purchasing marijuana from a marijuana cultivation facility; and

(6) Purchasing of marijuana or marijuana products from a marijuana product manufacturing facility.

(d) Notwithstanding any other provision of law, the following acts, when performed by a marijuana testing facility with a current, valid registration, or a person 21 years of age or older who is acting in his or her capacity as an owner, employee or agent of a marijuana testing facility, are lawful and shall not be an offense under Alaska law or be a basis for seizure or forfeiture of assets under Alaska law:

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

(2) Receiving marijuana or marijuana products from a marijuana cultivation facility, a marijuana retail store, a marijuana products manufacturer, or a person 21 years of age or older; and

(3) Returning marijuana or marijuana products to a marijuana cultivation facility, marijuana retail store, marijuana products manufacturer, or a person 21 years of age or older.

(e) Notwithstanding any other provision of law, it is lawful and shall not be an offense under Alaska law or be a basis for seizure or forfeiture of assets under Alaska law to lease or otherwise allow the use of property owned, occupied or controlled by any person, corporation or other entity for any of the activities conducted lawfully in accordance with paragraphs (a) through (d) of this section.

(f) Nothing in this section prevents the imposition of penalties upon marijuana establishments for violating this chapter or rules adopted by the board or local governments pursuant to this chapter.

(g) The provisions of AS 17.30.020 do not apply to marijuana establishments.

Sec. 17.38.080. Marijuana Control Board.

At any time, the legislature may create a Marijuana Control Board in the Department of Commerce, Community, and Economic Development or its successor agency to assume the power, duties, and responsibilities delegated to the Alcoholic Beverage Control Board under this chapter.

Sec. 17.38.090. Rulemaking.

(a) Not later than nine months after the effective date of this act, the board shall adopt regulations necessary for implementation of this chapter. Such regulations shall not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. Such regulations shall include:

(1) Procedures for the issuance, renewal, suspension, and revocation of a registration to operate a marijuana establishment, with such procedures subject to all requirements of AS 44.62, the Administrative Procedure Act;

(2) A schedule of application, registration and renewal fees, provided, application fees shall not exceed $5,000, with this upper limit adjusted annually for inflation, unless the board determines a greater fee is necessary to carry out its responsibilities under this chapter;

(3) Qualifications for registration that are directly and demonstrably related to the operation of a marijuana establishment;

(4) Security requirements for marijuana establishments, including for the transportation of marijuana by marijuana establishments;

(5) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under the age of 21;

(6) Labeling requirements for marijuana and marijuana products sold or distributed by a marijuana establishment;

(7) Health and safety regulations and standards for the manufacture of marijuana products and the cultivation of marijuana;

(8) Reasonable restrictions on the advertising and display of marijuana and marijuana products; and

(9) Civil penalties for the failure to comply with regulations made pursuant to this chapter.

(b) In order to ensure that individual privacy is protected, the board shall not require a consumer to provide a retail marijuana store with personal information other than government-issued identification to determine the consumer's age, and a retail marijuana store shall not be required to acquire and record personal information about consumers.

Sec. 17.38.100. Marijuana establishment registrations.

(a) Each application or renewal application for a registration to operate a marijuana establishment shall be submitted to the board. A renewal application may be submitted up to 90 days prior to the expiration of the marijuana establishment's registration.

(b) The board shall begin accepting and processing applications to operate marijuana establishments one year after the effective date of this act.

(c) Upon receiving an application or renewal application for a marijuana establishment, the board shall immediately forward a copy of each application and half of the registration application fee to the local regulatory authority for the local government in which the applicant desires to operate the marijuana establishment, unless the local government has not designated a local regulatory authority pursuant to AS 17.38.110(c).

(d) Within 45 to 90 days after receiving an application or renewal application, the board shall issue an annual registration to the applicant unless the board finds the applicant is not in compliance with regulations enacted pursuant to AS 17.38.090 or the board is notified by the relevant local government that the applicant is not in compliance with ordinances and regulations made pursuant to AS 17.38.110 and in effect at the time of application.

(e) If a local government has enacted a numerical limit on the number of marijuana establishments and a greater number of applicants seek registrations, the board shall solicit and consider input from the local regulatory authority as to the local government's preference or preferences for registration.

(f) Upon denial of an application, the board shall notify the applicant in writing of the specific reason for its denial.

(g) Every marijuana establishment registration shall specify the location where the marijuana establishment will operate. A separate registration shall be required for each location at which a marijuana establishment operates.

(h) Marijuana establishments and the books and records maintained and created by marijuana establishments are subject to inspection by the board.

Sec. 17.38.110. Local control.

(a) A local government may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance or by a voter initiative.

(b) A local government may enact ordinances or regulations not in conflict with this chapter or with regulations enacted pursuant to this chapter, governing the time, place, manner and number of marijuana establishment operations. A local government may establish civil penalties for violation of an ordinance or regulation governing the time, place, and manner of a marijuana establishment that may operate in such local government.

(c) A local government may designate a local regulatory authority that is responsible for processing applications submitted for a registration to operate a marijuana establishment within the boundaries of the local government. The local government may provide that the local regulatory authority may issue such registrations should the issuance by the local government become necessary because of a failure by the board to adopt regulations pursuant to AS 17.38.090 or to accept or process applications in accordance with AS 17.38.100.

(d) A local government may establish procedures for the issuance, suspension, and revocation of a registration issued by the local government in accordance with (f) of this section or (g) of this section. These procedures shall be subject to all requirements of AS 44.62, the Administrative Procedure Act.

(e) A local government may establish a schedule of annual operating, registration, and application fees for marijuana establishments, provided, the application fee shall only be due if an application is submitted to a local government in accordance with (f) of this section and a registration fee shall only be due if a registration is issued by a local government in accordance with (f) of this section or (g) of this section.

(f) If the board does not issue a registration to an applicant within 90 days of receipt of the application filed in accordance with AS 17.38.100 and does not notify the applicant of the specific, permissible reason for its denial, in writing and within such time period, or if the board has adopted regulations pursuant to AS 17.38.090 and has accepted applications pursuant to AS 17.38.100 but has not issued any registrations by 15 months after the effective date of this act, the applicant may resubmit its application directly to the local regulatory authority, pursuant to (c) of this section, and the local regulatory authority may issue an annual registration to the applicant. If an application is submitted to a local regulatory authority under this paragraph, the board shall forward to the local regulatory authority the application fee paid by the applicant to the board upon request by the local regulatory authority.

(g) If the board does not adopt regulations required by AS 17.38.090, an applicant may submit an application directly to a local regulatory authority after one year after the effective date of this act and the local regulatory authority may issue an annual registration to the applicant.

(h) A local regulatory authority issuing a registration to an applicant shall do so within 90 days of receipt of the submitted or resubmitted application unless the local regulatory authority finds and notifies the applicant that the applicant is not in compliance with ordinances and regulations made pursuant to (b) of this section in effect at the time the application is submitted to the local regulatory authority. The local government shall notify the board if an annual registration has been issued to the applicant.

(i) A registration issued by a local government in accordance with (f) of this section or (g) of this section shall have the same force and effect as a registration issued by the board in accordance with AS 17.38.100. The holder of such registration shall not be subject to regulation or enforcement by the board during the term of that registration.

(j) A subsequent or renewed registration may be issued under (f) of this section on an annual basis only upon resubmission to the local government of a new application submitted to the board pursuant to AS 17.38.100.

(k) A subsequent or renewed registration may be issued under (g) of this section on an annual basis if the board has not adopted regulations required by AS 17.38.090 at least 90 days prior to the date upon which such subsequent or renewed registration would be effective or if the board has adopted regulations pursuant to AS 17.38.090 but has not, at least 90 days after the adoption of such regulations, issued registrations pursuant to AS 17.38.100.

(l) Nothing in this section shall limit such relief as may be available to an aggrieved party under AS 44.62, the Administrative Procedure Act.

Sec. 17.38.120. Employers, driving, minors and control of property.

(a) Nothing in this chapter is intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growing of marijuana in the workplace or to affect the ability of employers to have policies restricting the use of marijuana by employees.

(b) Nothing in this chapter is intended to allow driving under the influence of marijuana or to supersede laws related to driving under the influence of marijuana.

(c) Nothing in this chapter is intended to permit the transfer of marijuana, with or without remuneration, to a person under the age of 21.

(d) Nothing in this chapter shall prohibit a person, employer, school, hospital, recreation or youth center, correction facility, corporation or any other entity who occupies, owns or controls private property from prohibiting or otherwise regulating the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property.

Sec. 17.38.130. Impact on medical marijuana law.

Nothing in this chapter shall be construed to limit any privileges or rights of a medical marijuana patient or medical marijuana caregiver under AS 17.37.

Sec. 17.38.900. Definitions.

As used in this chapter unless the context otherwise requires:

(1) "Board" means the Alcoholic Beverage Control Board established by AS 04.06.

(2) "Consumer" means a person 21 years of age or older who purchases marijuana or marijuana products for personal use by persons 21 years of age or older, but not for resale to others.

(3) "Consumption" means the act of ingesting, inhaling, or otherwise introducing marijuana into the human body.

(4) "Local government" means both home rule and general law municipalities, including boroughs and cities of all classes and unified municipalities.

(5) "Local regulatory authority" means the office or entity designated to process marijuana establishment applications by a local government.

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

(7) "Marijuana accessories" means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

(8) "Marijuana cultivation facility" means an entity registered to cultivate, prepare, and package marijuana and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

(9) "Marijuana establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

(10) "Marijuana product manufacturing facility" means an entity registered to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

(11) "Marijuana products" means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

(12) "Marijuana testing facility" means an entity registered to analyze and certify the safety and potency of marijuana.

(13) "Retail marijuana store" means an entity registered to purchase marijuana from marijuana cultivation facilities, to purchase marijuana and marijuana products from marijuana product manufacturing facilities, and to sell marijuana and marijuana products to consumers.

(14) "Unreasonably impracticable" means that the measures necessary to comply with the regulations require such a high investment of risk, money, time, or any other resource or asset that the operation of a marijuana establishment is not worthy of being carried out in practice by a reasonably prudent businessperson.

***Sec. 2.** AS 43 is amended by adding a new chapter to read:

Chapter 61. Excise tax on marijuana

Sec. 43.61.010. Marijuana tax.

(a) An excise tax is imposed on the sale or transfer of marijuana from a marijuana cultivation facility to a retail marijuana store or marijuana product manufacturing facility. Every marijuana cultivation facility shall pay an excise tax at the rate of $50 per ounce, or proportionate part thereof, on marijuana that is sold or transferred from a marijuana cultivation facility to a retail marijuana store or marijuana product manufacturing facility.

(b) The department may exempt certain parts of the marijuana plant from the excise tax described in (a) of this section or may establish a rate lower than $50 per ounce for certain parts of the marijuana plant.

Sec. 43.61.020. Monthly Statement and Payments.

(a) Each marijuana cultivation facility shall send a statement by mail or electronically to the department on or before the last day of each calendar month. The statement must contain an account of the amount of marijuana sold or transferred to retail marijuana stores and marijuana product manufacturing facilities in the state during the preceding month, setting out

(1) the total number of ounces, including fractional ounces sold or transferred;

(2) the names and Alaska address of each buyer and transferee; and

(3) the weight of marijuana sold or transferred to the respective buyers or transferees.

(b) The marijuana cultivation facility shall pay monthly to the department, all taxes, computed at the rates prescribed in this chapter, on the respective total quantities of the marijuana sold or transferred during the preceding month. The monthly return shall be filed and the tax paid on or before the last day of each month to cover the preceding month.

Sec. 43.61.030. Administration and Enforcement of Tax.

(a) Delinquent payments under this chapter shall subject the marijuana cultivation facility to civil penalties under AS 43.05.220.

(b) If a marijuana cultivation facility fails to pay the tax to the state the marijuana cultivation facility's registration may be revoked in accordance with procedures established under AS 17.38.090(a)(1).

***Sec. 3.** The provisions of this Act are independent and severable, and, except where otherwise indicated in the text, shall supersede conflicting statutes, local charter, ordinance, or resolution, and other state and local provisions. If any provision of this Act, or the application thereof to any person or circumstance, is found to be invalid or unconstitutional, the remainder of this Act shall not be affected and shall be given effect to the fullest extent possible.

KENAI LEGISLATIVE INFORMATION OFFICE

Email: **Kenai_LIO@akleg.gov**

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WRITTEN TESTIMONY

NAME: Kelly Johnson

REPRESENTING:

BILL # or SUBJECT: HB 79 & SB 30

COMMITTEE: House Judiciary & Senate Judiciary **DATE:** 1-30-15

To the members of the House & Senate Judiciary Committees:

I have been researching this issue to better involve myself in local meetings here on the Kenai Peninsula.
During my research I ran across the ordinance that is in place in Butte County, California.
I have talked to people there, in California, about this, including representatives on their board.
They said that they too had struggled with this issue since they had legalized marijuana for medical use a few years ago.
Problems grew and grew until both sides of the issue understood that something had to been done to corral the situation.
After 40 public meetings, lots of discussions, and lots of give and take they came up with a 37-page ordinance (attached).
I am being told that this has helped them a lot.
Grow operations are out of sight, crime is down, and shootings are all but gone now.
Jokingly I was told that even the cows are happier now.
I don't send this to you as a cureall, but I feel that there are things in this ordinance that you may find very useful as you try to deal with the issue before all of us now.

I personally am not a happy camper about this passing in the first place, but in this ordinance I see several things I could live with.

Please look it over and good luck in your deliberations.

Thank you,

Kelly Johnson
Retired teacher
Home 907-262-2578

LEGAL SERVICES

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

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Mail Stop 3101

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

MEMORANDUM February 18, 2015

SUBJECT: Notwithstanding any other provision of law (CSSB 30(JUD); Work Order No. 29-LS0231\S)

TO: Senator Lesil McGuire
Chair of the Senate Judiciary Committee
Attn: Amy Saltzman

FROM: Hilary V. Martin
Legislative Counsel

You have asked for an opinion on the phrase "notwithstanding any other provision of law" that appears in the marijuana initiative, and what the pros and cons are of incorporating this phrase into the Alaska statutes.

Generally, the phrase "notwithstanding any other provision of law" is discouraged.[1] If there is another law that you are specifically trying to override, it is better to put that statute in the bill. Otherwise, any other statute that conflicts with the provision could be overridden by using the phrase "notwithstanding any other provision of law." Without specifying which other statutes are to be canceled by the phrase "notwithstanding any other provision of law," there could be confusion as to which statutes apply and which do not. This confusion could eventually lead to a court deciding what the phrase applies to.

The author of the *Legislative Drafter's Deskbook: A Practical Guide* describes the use of "[n]otwithstanding any other provision of law" by Congress and its interpretation by federal courts in the following manner.

> The phrase "notwithstanding any other provision of law" is popular with people who have not really thought through a problem. They think that it is an effective way to ensure that a new rule prevails over an old rule -- but they are wrong.
>
> Courts do not take the phrase very seriously, and for good reason: Even when Congress does use the phrase, Congress does not intend that all other laws are to be disregarded.

---

[1] The plain meaning of the word "notwithstanding" is "despite" according to *Black's Law Dictionary*.

. . . .

> A definitive statement from the Supreme Court is hard to come by, but several federal appeals courts have held that the phrase is not always to be taken literally and does not require that all otherwise applicable laws be disregarded.
>
> . . . .
>
> In short, a court will try to give "notwithstanding any other provision of law" some meaning, but it is never clear precisely what that meaning will be.[2]

The Alaska Supreme Court has stated that in interpreting a statute it will look to three primary factors: "the language of the statute, the legislative history, and the legislative purpose behind the statute."[3] Ultimately, if there is confusion about the phrase, the Court will likely have to interpret what it means. A court could disregard too many laws or too few. The better option to ensure clarity is to specify exactly what laws are not to apply.

The phrase could arguably be helpful if there is a provision that was overlooked and could potentially be relevant to the ballot initiative and the current bill. The phrase would override any other statute that might apply to the contrary. However, it is still better drafting practice to eliminate the phrase and specify what statutes are meant to be overruled by the phrase "notwithstanding any other provision of law."

I also note that in the current version of the bill, both AS 17.38.200 and 17.38.210 contain the phrase "except as authorized in AS 17.38.020," which means that if something is authorized in AS 17.38.020, the action would not be a crime. This language makes it is less necessary to include the phrase "notwithstanding any other provision of law" in the bill.

The phrase "notwithstanding any other provision of law" does currently appear in statute. A brief search turned up 36 results with the phrase.

If I may be of further assistance, please advise.

HVM:lnd
15-114.lnd

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[2] Tobias A. Dorsey, *Legislative Drafter's Deskbook: A Practical Guide*, 255 - 256 (2006).

[3] *Gou-Leonhardt v. State*, 323 P.3d 700, 702 (Alaska 2014).

Court of Appeals of Alaska.

David S. NOY, Appellant,
v.
STATE of Alaska, Appellee.

No. A-8327.

Aug. 29, 2003.

Appeal from the District Court, Fourth Judicial District, Fairbanks, Jane F. Kauvar, Judge.

William R. Satterberg, Jr., Law Offices of William R. Satterberg, Jr., Fairbanks, for Appellant.

Kenneth M. Rosenstein, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Gregg D. Renkes, Attorney General, Juneau, for Appellee.

Before: COATS, Chief Judge, and MANNHEIMER and STEWART, Judges.

OPINION

STEWART, Judge.

*1 A jury convicted David S. Noy of violating AS 11.71.060(a), which prohibits possession of less than eight ounces of marijuana. The marijuana was found in Noy's home. Noy appeals his conviction, arguing that he was convicted for engaging in conduct (possession of marijuana for personal use in one's home) that is protected by the privacy provision of the Alaska Constitution (article I, section 22) [FN1]

FN1. See Ravin v. State, 537 P.2d 494 (Alaska 1975)

We agree that Noy may have been convicted for conduct that is constitutionally protected. As we explain here, Alaska citizens have the right to possess less than four ounces of marijuana in their home for personal use. Accordingly, we reverse Noy's conviction. The State remains free to retry Noy if the State believes it can prove that Noy possessed at least four ounces of marijuana.

Noy also claims that the district court should have allowed him to raise the defense of medical necessity. However, as we explain, the district court properly rejected Noy's proposed defense.

Facts of the case

The North Pole police contacted Noy at his home and told him they smelled growing marijuana. The police searched Noy's house and found approximately eleven ounces of harvested marijuana, consisting of buds, leaves, and stalks. The police also found five immature marijuana plants. The police did not, however, find any scales or packaging material; nor was there any other evidence that Noy was engaged in any commercial conduct involving marijuana.

Except for the immature plants, all the plant material--including the buds, leaves, and stalks--was placed in a paper bag and sent to the state crime lab for identification and weighing. The immature plants were not tested, nor did they form part of the State's case. Ultimately, Noy was charged with possessing more than eight ounces of harvested marijuana.

At trial, however, the State did not offer the paper bag in evidence. Therefore, the jury had to rely on testimony and photographs showing what the police had placed in the bag. Based on the testimony and photographs, the paper bag obviously contained stalks along with buds and leaves. Among other things, the jury was instructed that "[m]arijuana means the seeds, leaves, buds, and flowers of the plant, Cannabis, whether growing or not, but it does not include the stalks of the plants, or fiber produced from the stalks." The jury found Noy not guilty of possessing eight ounces or more of marijuana, but guilty of possessing less than eight ounces.

Alaska Statute 11.71.060(a)(1), the statute that prohibits possession of less than eight ounces of marijuana under any and all circumstances, violates article I, section 22 of the Alaska Constitution as construed in Ravin v. State

Noy was convicted under AS 11.71.060(a)(1), which makes it a class B misdemeanor to use or display any amount of marijuana, or to possess "one or more preparations, compounds, mixtures, or substances" containing marijuana "of an aggregate weight of less than one-half pound." [FN2] This statute

criminalizes conduct that the Alaska Supreme Court has declared is protected under article I, section 22 of the Alaska Constitution

FN2. AS 11.71.060(a)(1) & (b).

*2 Article I, section 22 states: "The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section."

In Ravin, the Alaska Supreme Court held that this provision of our constitution protects possession of marijuana for personal use in one's home. The court acknowledged that there is no fundamental right to possess or ingest marijuana. Nevertheless, the court held that article I, section 22 gives people a heightened expectation of privacy with respect to their personal activities within their home. [FN3] The court held that this heightened right of privacy "encompass[ed] the possession and ingestion of ... marijuana in a purely personal, non-commercial context in the home" unless the state could show that such an intrusion into people's privacy bore "a close and substantial relationship ... to a legitimate governmental interest"--that is, unless the state proved "that the public health or welfare [would] in fact suffer" if private possession of marijuana were not prohibited. [FN4]

FN3. Ravin, 537 P.2d at 504-12.

FN4. Id. at 504, 511.

The supreme court concluded that the state had demonstrated a substantial interest in regulating the use of marijuana by drivers, in prohibiting the use of marijuana by children, in regulating the use or possession of marijuana in public places, and in regulating the buying and selling of marijuana. [FN5] The supreme court added that the state could validly prohibit "[p]ossession at home of amounts of marijuana indicative of [an] intent to sell rather than possession for personal use." [FN6] However, the court concluded that the state had shown "no adequate justification for ... prohibit[ing] possession of marijuana by an adult for personal consumption in the home." [FN7]

FN5. Id. at 511.

FN6. Id.

FN7. Id.

In 1975, following the supreme court's decision in Ravin, the Alaska Legislature amended AS 17.12 (the then-existing marijuana laws) to take into account the supreme court's ruling. The legislature exempted marijuana from the normal penalties for possession of "depressant, hallucinogenic, or stimulant drugs" [FN8] and enacted two special provisions governing marijuana possession: former AS 17.12.110(d) and (e). [FN9]

FN8. Former AS 17.12.110(a), as amended by ch. 110, ß 1, SLA 1975.

FN9. Ch. 110, ß 1, SLA 1975.

Former AS 17.12.110(d) prohibited public use of marijuana, possession of more than an ounce of marijuana in a public place, possession of any amount of marijuana while operating a motor vehicle or airplane, and possession of any amount of marijuana by a minor. The maximum penalty for violating these provisions was a fine of $1,000.

Former AS 17.12.110(e) prohibited possession by an adult of one ounce or less of marijuana in a public place. It also prohibited possession by an adult of any amount of marijuana for personal use in a non-public place. This second provision clearly encompassed possession of marijuana in one's home for personal use--conduct that, in Ravin, the supreme court had said was protected from governmental intrusion. However, the legislature declared that there was no criminal penalty for violating subsection (e); rather, the offender faced a "civil fine of not more than $100."

*3 Seven years later, in 1982, the legislature moved Alaska's drug laws from Title 17 to Title 11. The provisions of AS 17.12 dealing with marijuana were repealed, and new marijuana provisions were enacted in AS 11.71. [FN10] In this 1982 revision of the marijuana laws, the legislature dropped the civil fine for possession of marijuana for personal use in a non-

public place--thus ending any potential conflict with Ravin.

FN10. Ch. 45, ß 26, SLA 1982 (the repeal of AS 17.12) and ß 2 (the enactment of AS 11.71).

Under the newly enacted AS 11.71.050(a)(3)(E), possession of eight ounces or more of marijuana was made a class A misdemeanor. Under the newly enacted AS 11.71.060(a)(4), possession of four ounces or more of marijuana was made a class B misdemeanor. [FN11] The legislature also made it a violation to possess any amount of marijuana in a public place. [FN12] However, no statute prohibited possession of less than four ounces of marijuana for personal use in a non-public place.

FN11. The 1982 version of AS 11.71.060(a) also prohibited use of marijuana in a public place, or possession of one ounce or more of marijuana in a public place, or possession of any amount of marijuana while operating a motor vehicle, or possession of any amount of marijuana by a person under 19 years of age.

FN12. Former AS 11.71.070(a)(2).

In other words, following the legislature's 1982 revision of the marijuana laws, there was no penalty (whether criminal or civil) for possessing less than four ounces of marijuana in one's home for personal use. But this changed in 1990.

In the general election of 1990, the voters of Alaska approved a ballot proposition that amended AS 11.71.060(a) and repealed AS 11.71.070. [FN13] Under the amended (that is, the current) version of AS 11.71.060(a), possession of any amount of marijuana less than eight ounces is a class B misdemeanor. [FN14] This is the statute that Noy violated.

FN13. 1990 Initiative Proposal No. 2, ß ß 1-2.

FN14. AS 11.71.060(a)(1) and (b).

The question presented in this case is whether AS 11.71.060(a) is constitutional to the extent that it prohibits possession of marijuana by adults in their homes for personal use.

On one level, the answer is straightforward. The Alaska Supreme Court ruled in Ravin that the right of privacy codified in article I, section 22 of our state constitution protects the right of adults to possess marijuana in their homes for personal use. When a statute conflicts with a provision of our state constitution, the statute must give way. [FN15] Thus, a statute which purports to attach criminal penalties to constitutionally protected conduct is void.

FN15. See Falcon v. Alaska Public Offices Comm'n, 570 P.2d 469, 480 (Alaska 1977); Ravin, 537 P.2d at 511.

On a deeper level, the question is whether the voters of Alaska can, through the initiative process, abrogate a constitutional ruling of the Alaska Supreme Court--in particular, the court's ruling in Ravin that article I, section 22 of our state constitution protects an adult's right to possess marijuana in the home for personal use. The answer to this question is found in the Alaska Constitution itself. Article XII, section 11 states that the people of this state, through the ballot initiative process, may exercise "the law-making powers assigned to the legislature" (subject to the limitations codified in article XI of the constitution). That is, the initiative process constitutes a method by which the people of this state can directly enact legislation.

But just as the statutes enacted through the normal legislative process must not violate the constitution, the statutes enacted by ballot initiative must not violate the constitution. [FN16] Thus, even though the voters enacted AS 11.71.060(a)(1) through the initiative process, the constitutionality of this statute must be assessed in the same way as if it had been enacted through the normal legislative process. And, as we have said, this statute contravenes the constitutional right of privacy as interpreted by our supreme court in Ravin--because it declares that any possession of marijuana by adults in their homes for personal use is a crime.

FN16. See Alaskans for Legislative Reform

v. State, 887 P.2d 960, 962, 966 (Alaska 1994); Citizens Coalition for Tort Reform v. McAlpine, 810 P.2d 162, 168 (Alaska 1991).

Alaska Statute 11.71.060(a) must be limited to preserve its constitutionality

*4 We have concluded that AS 11.71.060(a)(1) is unconstitutional to the extent that it proscribes marijuana possession that, under the Ravin decision, is protected by article I, section 22 of the Alaska Constitution. But this does not mean that the statute is unconstitutional in its entirety. In Ravin, the supreme court acknowledged that the legislature could validly prohibit possession of marijuana in the home if the marijuana was of such a quantity as to be "indicative of [possession with] intent to sell rather than possession for personal use." [FN17] Thus, in Walker v. State [FN18] we held that the legislature could validly prohibit possession of eight ounces or more of marijuana--even if the marijuana was possessed by an adult in their home for personal use. [FN19]

FN17. 537 P.2d at 511.

FN18. 991 P.2d 799 (Alaska App.1999).

FN19. Id.

The question inherent in this analysis is whether, consistent with Ravin, the legislature might validly prohibit all instances of marijuana possession in some amount less than eight ounces. As we noted in Walker, the Ravin decision "does not elaborate on what amount of marijuana might constitute an 'amount ... indicative of intent to sell.'" [FN20]

FN20. Id. (quoting Ravin, 537 P.2d at 511).

Before the marijuana laws were amended by voter initiative in 1990, the Alaska Legislature had (by statute) defined the amount of marijuana that adults could lawfully possess in their home for personal use. Under the pre-1990 statutes governing marijuana possession, an adult could be prosecuted for possessing four ounces or more of marijuana in their home for personal use. Possession of less than this amount was not a crime. [FN21]

FN21. See former AS 11.71.060 and AS 11.71.070.

There are no appellate cases testing the constitutionality of the legislature's four-ounce dividing line. However, Noy has not argued that this four-ounce dividing line violates Ravin. We note, moreover, that article I, section 22 entrusts the legislature with the duty of implementing the constitutional right of privacy. Given the language of article I, section 22, and given the deference that we should pay to the decision of a co-equal branch of government, we conclude that the legislature's four-ounce dividing line is presumptively constitutional under Ravin.

Although we have declared that the current version of AS 11.71.060(a) is unconstitutional (because it prohibits conduct that is constitutionally protected), we have a duty to preserve the statute to the extent possible--that is, to the extent that it is consistent with the constitution. [FN22] The pre 1990 version of the statute contained a four-ounce ceiling on marijuana possession in the home by adults for personal use--a ceiling that is presumptively constitutional. The 1990 voter initiative expanded the scope of AS 11.71.060(a) by eliminating this four-ounce ceiling and declaring that all possession of marijuana by adults in their homes for personal use was illegal. In this new version, the statute violates article I, section 22 of the constitution. To make the statute conform to the constitution again, we must return it to its pre-1990 version.

FN22. See Hoffman v. State, 404 P.2d 644, 646 (Alaska 1965) (ruling that if a statute may be reasonably construed to avoid unconstitutionality, the court must do so).

*5 We thus conclude that, with respect to possession of marijuana by adults in their home for personal use (conduct that is protected under the Ravin decision), AS 11.71.060(a)(1) remains constitutional to the extent that it prohibits possession of four ounces or more of marijuana. Restricted in this fashion, AS 11.71.060(a)(1) remains enforceable.

Noy is entitled to a new trial

We have ruled that AS 11.71.060(a) validly continues to prohibit possession of four ounces or more of marijuana, even when the possession is by adults in their home for personal use. But it is possible that the jury convicted Noy even though they believed that he possessed less than this amount. For this reason, we must reverse Noy's conviction.

As explained earlier in this opinion, Noy was prosecuted under AS 11.71.050(a) for possessing eight ounces or more of marijuana. The jury acquitted Noy of this charge, but convicted him under AS 11.71.060(a) for possessing some amount of marijuana less than eight ounces. The problem is that the jury was not asked to determine what lesser amount of marijuana Noy possessed.

The State remains free to retry Noy for marijuana possession. However, because the jury acquitted Noy of possessing eight ounces or more of marijuana, the State is collaterally estopped from asserting that Noy possessed eight ounces or more. The State can, however, claim that Noy possessed at least four ounces of marijuana--enough to justify a conviction under AS 11.71.060(a)(1) (as we now have limited it).

Was Noy entitled to raise a common law defense of medical necessity?

At trial, Noy argued that he was entitled to have the jury decide whether his possession of marijuana was justified by medical necessity under AS 11.81.320. The trial judge, District Court Judge Jane F. Kauvar, ruled that Noy could not avail himself of the normal defense of necessity under AS 11.81.320. Rather, Judge Kauvar ruled, Noy could only assert the affirmative defense for the medical use of marijuana codified in AS 11.71.090.

Judge Kauvar's ruling was based on the wording of AS 11.81.320. This statute declares that the defense of necessity remains available "to the extent permitted by common law" unless "[Title 11 or another] statute defining the offense provides exemptions or defenses dealing with the justification of necessity in the specific situation involved," or unless "a legislative intent to exclude the justification of necessity ... otherwise plainly appear[s]." [FN23]

FN23. AS 11.81.320(a)(1)-(2).

Judge Kauvar noted that the legislature has enacted another statute, AS 11.71.090, that specifically deals with the defense of medical necessity for the possession of marijuana. Because of this, Judge Kauvar ruled that Noy's claim of medical necessity for his possession of marijuana had to be raised and litigated under AS 11.71.090 rather than under the general necessity defense codified in AS 11.81.320.

This ruling was correct. The general necessity defense statute, AS 11.81.320, expressly states that a more specific statute takes precedence. Noy asserted that he had a medical need to use marijuana. Alaska Statute 11.71.090 specifically addresses this issue, and defines a separate affirmative defense of medical necessity to possess marijuana. Noy's claim of necessity was therefore governed by the specific necessity statute, AS 11.71.090, rather than by the general necessity statute, AS 11.81.320.

Jury instructions

*6 Noy does not contest the jury instructions that were given at his trial. However, because Noy may be retried, we believe we should address the State's contention that Judge Kauvar inaccurately instructed the jury concerning how to determine the weight of harvested marijuana.

Judge Kauvar properly instructed the jury that "[m]arijuana means the seeds, leaves, buds, and flowers of the plant[.]" [FN24] But Judge Kauvar also instructed the jury that the aggregate weight of a live marijuana plant was "the weight of the marijuana when reduced to its commonly used form." Based on this instruction, Noy urged the jury to consider only the aggregate weight of the "buds" in determining how much marijuana he had possessed. But the "commonly used form" of marijuana is only relevant when a person is charged with possessing live marijuana plants. [FN25] Noy was only charged with possessing harvested marijuana. Therefore, in the event of a retrial, assuming the State again charges Noy with possessing only harvested marijuana, the district court should not instruct the jury on how to determine the aggregate weight of live marijuana, or allow the parties to argue about the definition of the "commonly used form" of marijuana.

FN24. See AS 11.71.900(14).

FN25. See Maness v. State, 49 P.3d 1128, 1134 (Alaska App.2002) (quoting Gibson v. State, 719 P.2d 687, 690 (Alaska

App.1986)) (the "commonly used form" language of AS 11.71.080 "refers to the method of calculating the aggregate weight of live marijuana plants").

Conclusion

To make AS 11.71.060(a)(1) consistent with article I, section 22 of the Alaska Constitution as interpreted in Ravin, we must limit the scope of the statute. As currently written, the statute prohibits possession of any amount of marijuana. But with regard to possession of marijuana by adults in their home for personal use, AS 11.71.060(a)(1) must be interpreted to prohibit only the possession of four ounces or more of marijuana.

The judgment of the district court is REVERSED.

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