

01/22/15

OVERVIEW:

**BALLOT MEASURE
NO. 2 - AN ACT
TO TAX &
REGULATE THE
PRODUCTION,
SALE, & USE OF
MARIJUANA**

<TARGET><BILL></BILL><SUBJECT>01-22-15 OVERVIEW BALLOT
MEASURE NO. 2 - AN ACT TO TAX and REGULATE THE
PRODUCTION, SALE, and USE OF
MARIJUANA</SUBJECT><COMM>SSTA29</COMM></TARGET>

State of Alaska

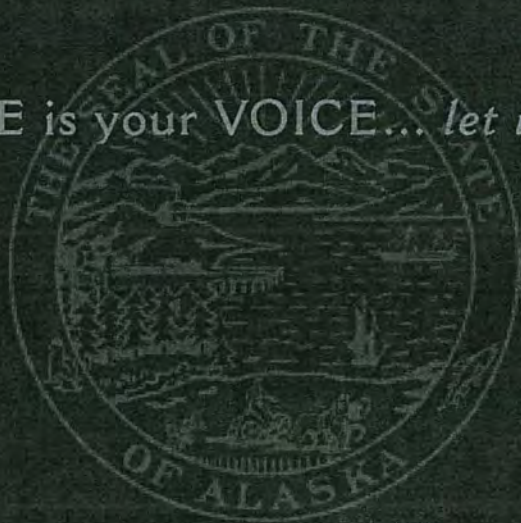
OFFICIAL ELECTION PAMPHLET

November 4, 2014



Vote

Your VOTE is your VOICE... *let it be heard!*



REGION I

- Southeast
- Kenai Peninsula
- Kodiak
- Prince William Sound

**Ballot Measure No. 2 - 13PSUM
An Act To Tax and Regulate the
Production, Sale, And Use of Marijuana**

Ballot Measure No. 2
This bill would tax and regulate the production, sale, and use of marijuana in Alaska.

The bill would make the use of marijuana legal for persons 21 years of age or older. The bill would allow a person to possess, use, show, buy, transport, or grow set amounts of marijuana, with the growing subject to certain restrictions. The bill would ban the public use of marijuana. The bill would prohibit a person under 21 years of age from using false identification to buy or try to buy marijuana or marijuana accessories.

The bill would allow validly registered marijuana-related entities and persons 21 years of age or older who own or are employed by these entities to make, possess, buy, distribute, sell, show, store, transport, deliver, transfer, receive, harvest, process, or package marijuana and marijuana products, subject to certain restrictions. Alaska Statute 17.30.020 (Controlled Substances) would not apply to these entities.

The bill would require the Alcoholic Beverage Control (ABC) Board to implement parts of the bill. But the bill would also let the legislature create a Marijuana Control Board to assume these duties. The bill would require the ABC Board to adopt regulations governing marijuana-related entities. The regulations would need to cover certain topics and be subject to certain restrictions. The bill would also create procedures for registering a marijuana-related entity. The procedures would be managed by the ABC Board and local governments.

The bill would allow a local government to prohibit the operation of marijuana-related entities. A local government could do that by enacting an ordinance or through voter initiative. The ordinances could cover the time, place, manner, and registration of a marijuana entity's operations.

The bill would allow a person 21 years of age or older to possess, use, show, buy, or transport marijuana accessories. Marijuana accessories are products individuals use to grow or consume marijuana. The bill would also allow persons 21 years of age or older to make marijuana accessories and to distribute or sell them to persons who are 21 years of age or older.

The bill states that it is not intended to require an employer to allow marijuana use, transportation, possession, sale, growth, or transfer or prevent an employer from prohibiting these activities. The bill does not intend to supersede laws prohibiting driving under the influence of marijuana. The bill does not intend to prohibit schools, correction facilities, hospitals, or private persons or entities from restricting marijuana on their property. The bill does not intend to limit the state's existing medical marijuana laws.

The bill would impose a \$50 per ounce (or proportionate) excise tax on the sale or transfer of marijuana from a cultivation facility to a retail store or marijuana product manufacturing facility. The marijuana cultivation facility would pay the tax and send monthly tax statements to the Department of Revenue. The Department of Revenue could exempt certain parts of the marijuana plant from the tax. It could also establish a lower tax rate for certain parts of the plant.

The bill defines numerous terms. The bill contains a statement of purpose and findings. The bill would impose civil fines and penalties for violations.

Should this initiative become law?

YES NO

**Ballot Measure No. 3 - 13MINW
An Act To Increase Alaska's Minimum Wage**

Ballot Measure No. 3

This bill would raise Alaska's minimum wage from \$7.75 per hour to \$8.75 per hour as of January 1, 2015. The bill would raise the minimum wage to \$9.75 per hour as of January 1, 2016. The bill would adjust the minimum wage each year for inflation after 2016. The bill creates a method for this adjustment. Under the bill, if the adjusted minimum wage is less than one dollar over the federal minimum wage, Alaska's minimum wage will be one dollar over the federal minimum. Tips or gratuities would not count toward the minimum wage.

The bill has a statement of findings and declaration. This statement gives reasons for the bill. The reasons pertain to quality of life for low income workers, the effect of increases in the cost of living, the relationship of the Alaska minimum wage to the federal poverty level, and the minimum wage in other states.

Should this initiative become law?

YES NO

**Ballot Measure No. 4 - 12BBAY
An Act Providing for Protection of Bristol Bay
Wild Salmon and Waters Within or Flowing Into
the Existing
1972 Bristol Bay Fisheries Reserve**

Ballot Measure No. 4

This bill would require the legislature to approve future large-scale metallic sulfide mines in the Bristol Bay Fisheries Reserve (BBFR) by passing a law. The law would have to find that any proposed mine would not endanger the BBFR fishery. The approval would be in addition to any other required permits or authorizations. The bill defines "large-scale metallic sulfide mining operation" as "a specific mining proposal to extract metals, including gold and copper, from sulfide-bearing rock and that would directly disturb 640 or more acres of land." The bill lets the Department of Natural Resources adopt regulations.

The bill would make findings. The bill's findings would be that the legislature found the BBFR important by creating it in 1972; that the bill's protections are necessary; that protecting the waters and wild salmon of the BBFR is of statewide interest based on the region's fisheries, economic benefits, cultural heritage, and unique wild salmon resources; and that metallic sulfide mining may harm these interests because mines can produce toxins and pollutants. The bill intends the legislature to approve any large-scale metallic sulfide mine in the BBFR or which could adversely affect its watershed.

The bill would apply only to large-scale metallic sulfide mines in the BBFR that lack all required permits, licenses, or approvals before the bill's effective date.

Should this initiative become law?

YES NO

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

BALLOT LANGUAGE

Ballot Measure No. 2 – 13PSUM
An Act to Tax and Regulate the Production, Sale,
and Use of Marijuana

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The bill would require the Alcoholic Beverage Control (ABC) Board to implement parts of the bill. But the bill would also let the legislature create a Marijuana Control Board to assume these duties. The bill would require the ABC Board to adopt regulations governing marijuana-related entities. The regulations would need to cover certain topics and be subject to certain restrictions. The bill would also create procedures for registering a marijuana-related entity. The procedures would be managed by the ABC board and local governments.

The bill would allow a local government to prohibit the operation of marijuana-related entities. A local government could do that by enacting an ordinance or through voter initiative. The ordinances could cover the time, place, manner, and registration of a marijuana entity's operations.

The bill would allow a person 21 years of age or older to possess, use, show, buy, or transport marijuana accessories. Marijuana accessories are products individuals use to grow or consume marijuana. The bill would also allow persons 21 years of age or older to make marijuana accessories and to distribute or sell them to persons who are 21 years of age or older.

The bill states that it is not intended to require an employer to allow marijuana use, transportation, possession, sale, growth, or transfer, or prevent an employer from prohibiting these activities. The bill does not intend to supersede laws prohibiting driving under the influence of marijuana. The bill does not intend to prohibit schools, correction facilities, hospitals, or private persons or entities from restricting marijuana on their property. The bill does not intend to limit the state's existing medical marijuana laws.

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An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

The bill would impose a \$50 per ounce (or proportionate) excise tax on the sale or transfer of marijuana from a cultivation facility to a retail store or marijuana product manufacturing facility. The marijuana cultivation facility would pay the tax and send monthly tax statements to the Department of Revenue. The Department of Revenue could exempt certain parts of the marijuana plant from the tax. It could also establish a lower tax rate for certain parts of the plant.

The bill defines numerous terms. The bill contains a statement of purpose and findings. The bill would impose civil fines and penalties for violations.

Should this initiative become law?

Yes No

LEGISLATIVE AFFAIRS AGENCY SUMMARY

The Act regulates the production, sale, and use of marijuana. The Act enacts a marijuana tax.

The Act allows personal use of marijuana by a person 21 years of age or older, with restrictions. The Act lets a person have, show, use, buy, transport, or give away up to one ounce of marijuana to another person 21 years of age or older. The Act makes it a crime for a person under 21 to use a false ID to buy marijuana. The Act also makes it a crime to use marijuana in public. The Act sets the number and types of marijuana plants a person may keep and give away. The plants may not be in public view. The Act allows a person 21 years of age or older to buy, make, have, show, sell, and give away items used to grow, use, produce, package, or store marijuana, or produce, use, package, test, or store marijuana products.

The Act regulates marijuana establishments. The Act defines an establishment as a retail store, a grower, a tester, or a product manufacturing facility. To operate legally, an establishment must register. Registered establishments may possess, transport, deliver, display, or receive marijuana. Registered marijuana stores, growers, or manufacturers may buy and sell marijuana. Growers or testers may grow or process it.

The Alcoholic Beverage Control Board administers the registration system. The board must make rules to carry out the Act. Those rules may not make it impractical to operate a marijuana establishment. The board must give a copy of each application and half the application fee to the local marijuana authority, if there is one; the Act provides for local control if the board does not act. Cities or boroughs may ban establishments. They may limit the number of them within their boundaries. They may regulate the time, place, and manner of operation. They may name local authorities to regulate them.

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An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

The Act taxes the sale of marijuana by registered growers. The tax is \$50 per ounce. The Department of Revenue administers the tax. Growers who pay late may be subject to fines. Growers who do not pay the tax may lose their registrations.

Under the Act, employers do not have to allow marijuana in the work place. Employers may also restrict marijuana use by employees. The Act does not allow a person to drive under the influence of marijuana. The Act allows private property owners or tenants to ban the use of marijuana on the property.

STATEMENT OF COSTS

Estimate of Costs to the State of Alaska for the Implementation of the Initiative Proposing an Act to “tax and regulate the production, sale, and use of marijuana.”

Summary

As required by AS 15.45.090(a)(4), the State of Alaska has prepared the following statement of costs resulting from the implementation of the proposed ballot initiative to tax and regulate the production, sale, and use of marijuana.

The initiative would legalize the personal use of marijuana for persons age 21 or older. Specifically, the statute would permit: the possession, use, display, purchase, or transportation of marijuana accessories or one ounce or less of marijuana; the possession, growth, processing, or transporting of no more than six marijuana plants (with three or fewer being mature, flowering plants) and possession of the marijuana on the premises where the plants were grown; the transfer of 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; the consumption of marijuana in a non-public location; and assisting another person who is 21 years of age or older in any of the above activities.

The initiative would also impose certain restrictions and penalties on the personal cultivation and public consumption of marijuana as well as prohibit the use of false identification by a person under the age of 21 to purchase or attempt to purchase marijuana. It would allow for the manufacture, possession, purchase, distribution and sale of marijuana accessories as well as the lawful operation of marijuana-related facilities such as retail stores and cultivation facilities.

The initiative requires the Alcoholic Beverage Control Board (ABC) in the Department of Commerce, Community and Economic Development (DCCED) to adopt regulations to implement the law no later than nine months after the initiative is approved. However the legislature may create a Marijuana Control Board in DCCED to assume the ABC's regulatory role. Marijuana establishments must be registered and local governments could prohibit or limit the existence of and operations of marijuana facilities in their jurisdiction.

The initiative also imposes a \$50 per ounce (or proportionate part) excise tax on the sale and transfer of marijuana from a marijuana cultivation facility to a retail marijuana store or marijuana product manufacturing facility. The tax would be paid by the marijuana cultivation facility.

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Based on examination of Washington and Colorado, two states that are currently in the process of implementing similar legislation, the Governor, the Legislature, or the ABC Board may choose to establish a Task Force to represent the major stakeholders affected by the implementation of the initiative. An estimate of the potential costs for the Task Force are included under the DCCED cost statement beginning on page 3. This would be an effective method to facilitate an expedient and comprehensive gear-up of the tax and regulatory framework described or established in the initiative.

There are numerous unknowns in the State's implementation of this initiative and as such the cost statement provided here is illustrative. For example, it is unknown whether or not the legislature will create a Marijuana Control Board within DCCED, so the cost estimates do not reflect that potential administrative structure. Using information available from the Colorado and Washington experiences as well as other sources, state agencies have identified a range of potential costs to the state from \$3.7 to \$7.0 million in the first year. It is likely that costs related to development of the tax and regulatory framework would initially be significant. Over the longer term, it would be expected that more of the state's total costs would become public health and education activities as the extent of the impact on public health becomes more defined.

Below is a summary table of agency costs followed by explanations of the estimates by individual agency. The following represents a potential range of state agency costs. The estimate does not include expenses that the legislature may or may not incur associated with the initiative, or any legal expenses that the state may incur as a result of the initiative.

Summary of estimated costs to implement the Marijuana Initiative by State Agency

Agency	Cost Range - First Year	
Alaska Department of Revenue	\$650,000	\$800,000
Alaska Department of Commerce, Community and Economic Development	\$1,563,960	\$1,563,960
Alaska Department of Health and Social Services	\$0	\$2,987,000
Alaska Department of Public Safety	\$1,434,700	\$1,434,700
Alaska Department of Environmental Conservation	\$0	\$136,900
University of Alaska	indeterminate	--
Office of the Lieutenant Governor	\$9,000	\$9,000
Division of Elections	\$71,257	\$71,257
Total First Year Estimated Cost	\$3,728,917	\$7,002,817

Statement of Cost Estimates by Department

Estimate of costs to the Alaska Department of Revenue to implement the marijuana initiative

\$650,000 - \$800,000

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If this initiative is approved by the voters in the August 2014 primary election, it would require DOR to incur additional costs to effectively implement it. If approved, it is presumed that this initiative would take effect thirty days after approval by a majority of qualified voters.

The estimated cost to the state for the implementation of this initiative is between \$650,000 and \$800,000. Recurring annual costs are estimated at approximately \$300,000.

The estimated costs can be broken down into two categories:

Personnel Services:	\$300,000
<u>Contractual Services:</u>	<u>\$350,000-\$500,000</u>
TOTAL	\$650,000-\$800,000

Personnel - DOR estimates that it will need to create at least three new positions to oversee the new excise tax imposed by this initiative at a cost of approximately \$300,000 to assist with the administration and collection of a new excise tax. DOR would need at least one Tax Auditor III position, one Tax Technician II position, and one Investigator III position to fulfill the needs of a new tax program. This cost is similar to the cost that is currently incurred by DOR to administer other similar types of excise taxes, and would be recurring annual costs for DOR.

Contractual Services - DOR estimates that it will incur a one-time additional expense of approximately \$500,000 for systems configuration. In August 2014, DOR will be complete with configuring the excise tax portion of its new Tax Revenue Management System (TRMS). If this initiative is approved by the voters, it will require DOR and its information system contractors to reconfigure the system to add this new excise tax. Given the limited timeframe to analyze what portions of the system would need to be reconfigured if the initiative passed, DOR's contractors have supplied an estimate of \$350,000 to \$500,000 for this effort.

The above cost estimates represent a minimum cost given the numerous uncertainties around the referendum, and what all of the effects of its passage would be.

Estimate of costs to the Alaska Department of Commerce, Community and Economic Development to implement the marijuana initiative **\$1,563,960**

The following represents an estimated cost to DCCED given the language of the ballot initiative; the actual costs will likely be different. The estimate does not include expenses the legislature or other departments may incur associated with the initiative. The Washington and Colorado marijuana initiative cost estimates were reviewed in developing this cost analysis.

If the initiative is approved by voters in the August 2014 primary election, the State of Alaska, through the Alcoholic Beverage Control (ABC) Board, shall adopt regulations within nine months following the effective date, as required by AS 17.38.090. It is presumed that the initiative would take effect thirty days after the approval by a majority of qualified voters.

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An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

A local government may designate a local regulatory authority that would be responsible for processing applications submitted for the operation of a marijuana establishment within the boundaries of the local government. If the ABC Board fails to adopt regulations as outlined in the initiative, an applicant may submit an application directly to a local regulatory authority one year after the effective date of the law. In accord with AS 17.38.110, a local government may prohibit cultivating, manufacturing, testing, and selling marijuana through an ordinance or voter initiative. Local governments may also enact local ordinances or regulations for the governance of marijuana establishment operations as long as they are not in conflict with the initiative or regulations enacted pursuant to the initiative.

If the initiative passes, the responsibility for controlling marijuana will lie with the ABC Board until or unless a marijuana control board is established by the legislature within DCCED.

As was done in the state of Colorado following the passage of a similar initiative, the department recommends the creation of a Task Force to identify legal, policy, and procedural issues that need to be resolved, and to offer suggestions and proposals for legislative and executive action for the implementation of this initiative. The Task Force would need to complete its initial regulatory framework within four months of the effective date of the initiative to allow for the adoption of regulations within the nine month requirement. The remaining Task Force work would be concluded one year after the effective date of the initiative.

It is assumed that the Task Force would be comprised of a total of 17 uncompensated members representing interest groups affected by the ballot initiative: four Legislators, one each from the majority and minority of both the House and Senate; one Commissioner or their Designee from each agency affected by this initiative (DCCED, Public Safety, Health and Social Services, Environmental Conservation, Revenue, Law, Corrections and the University of Alaska); one member of the initiative campaign; one member of the public who represents the medical industry; and three members of the public at-large, with one representing rural Alaska. Task Force members will receive travel and per diem. The actual composition of the Task Force may be different. The estimated total cost to DCCED for the implementation of this initiative is \$1,563,960 for the first year and \$1,413,140 for the second year.

	<u>First Year</u>	<u>Second Year</u>
Business Registration Examiners, Range 13 C - 2 at \$73,000 each		\$146,000
Investigator IIIs, Range 18 C - 4 at \$99,300 each		\$397,200
Investigator IV, Range 20 C		\$110,000
Administrative Officer I, Range 17 C		\$86,000
Program Coordinator II, Range 20 C	\$107,800	\$107,800
Total Personal Service Costs	\$107,800	\$847,000
Board member/Staff travel and per diem		\$85,900
Informants/underage buyers (compliance check) travel, pay, and per diem		\$34,000
Task Force travel and per diem	\$16,600	
Total Travel and Per Diem Costs	\$16,600	\$119,900

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ABC Board Warning/Enforcement Signs	\$2,000	\$2,000
Envelopes	\$800	\$800
Forms	\$1,500	\$1,500
Postage	\$2,000	\$2,000
Office Space 160 sq. ft. per employee at \$3 foot	\$5,760	\$51,840
Ongoing support services for new employees	\$10,000	\$90,000
One-time set up costs for new positions	\$5,000	\$40,000
Total Equipment, Office Space, and Supplies Costs	\$27,060	\$188,140
Task Force recommendations contract funds	\$650,000	
Department of Law Assistant Attorney General Services	\$62,500	\$62,500
Department of Law for expedited regulations	\$200,000	
Database Creation	\$500,000	
Database Maintenance		\$50,000
Vehicles 4 at \$33,500		\$134,000
Vehicle Operating and Maintenance at \$240t per month		\$11,600
Total Contracts and Services Costs:	\$1,412,500	\$258,100
Total Costs:	\$1,563,960	\$1,413,140

Personal Services

All positions within the ABC Board are currently performing at or above capacity. With the passage of the initiative, the workload of the ABC Board has the potential to double or triple. If doubled, the ABC Board would require an additional four investigators, one supervisor, and two business registration examiners to regulate the marijuana industry, similar to the duties of current staff that regulate the liquor industry. The addition of an Administrative Officer I would be necessary to support the added financial requirements. A Program Coordinator II would be necessary for the facilitation, coordination, and documentation of the Task Force and for the long-term program development, planning, coordination, and oversight of this complex program.

Travel and Per Diem

Board

If the ABC Board of Directors takes on the added responsibility of controlling the cultivation, manufacture, barter, possession, and the sale of marijuana, the current board meetings would be extended by one day, adding to the cost of lodging, ground transportation, and per diem.

Investigations

Investigators and underage buyers will travel to communities around the state to provide compliance checks and ensure retailers adhere to the laws and regulations of the program, similar to liquor industry compliance investigations.

Task Force

The Task Force will hold seven two-day meetings, with two face-to-face meetings in Anchorage and the rest conducted either by video or teleconference; this assumes ten members are located

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An Act to Tax and Regulate the Production, Sale, and Use of Marijuana outside Anchorage.

Equipment, Office Space, and Supplies

Equipment and supply costs includes new employee set up, warning signs, test kits, paper products, postage, and additional office space.

Contracts and Services

Contract costs are for studies on market demand, effects of marijuana, and the cost of production. Regulations will need to be in place nine months after the effective date of this initiative and will require extensive work with the Department of Law. There will be significant ongoing work required by the Department of Law to meet the demands of this new program, similar to the legal demands of the liquor industry.

A new database would require the analysis and development of business rules, analysis of existing systems for parallel processes or required modifications, new system development, testing, validation, implementation, and documentation.

Vehicles

Additional vehicles are required to perform investigations across the state.

Estimate of costs to the Alaska Department of Health & Social Services

to implement the marijuana initiative

\$0 - \$2,987,000

As written, the initiative primarily focuses on the process and procedures necessary to establish taxation and regulation of the production, sale, and use of marijuana; the actions addressed in the initiative will not directly impact or cost the Department of Health and Social Services in the establishment of these procedures and regulation development.

However, there is evidence that downstream health and social service consequences of implementing this initiative could be significant. The department has prepared an estimate based on research, other states' experiences, and an extrapolation of expenses the department incurs providing similar substance related services. The fiscal impact will directly relate to how many additional people begin using marijuana and how many current users increase their use.

To evaluate costs, the department has considered recent studies including Proceedings of the National Academy of Science¹, and the United Nations Office on Drugs and Crime, *Cannabis: A Short Review*.²

These studies note emerging findings on the harmful effect of cannabis on neuropsychological functioning data indicating cannabis is linked to addiction, cognitive impairment, motor skills

¹ Persistent cannabis users show neuropsychological decline from childhood to midlife. Meier, Madeline H., Caspi, Avshalom, et al. Proceedings of the National Academy of Science. Published online August 27, 2012

² Cannabis: A Short Review, Discussion Paper from the United Nations Office on Drugs and Crime. 2012.

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deficiency, respiratory, cardiovascular and mental health problems, and has been shown to be particularly damaging to maturing brains.

The consequences and outcomes of marijuana use create a significant potential for increased costs for physical and behavioral health care, child welfare services, educational systems, employers, public safety, criminal justice, community health and other aspects of state and local governments. For instance, legalization of marijuana may create an environment in which young people, in particular, perceive a lower risk of harm from marijuana use, resulting in increased use.³

According to Robert Morrison, Executive Director of the National Association of State Alcohol and Drug Abuse Directors (NASADA), Alaska has one of the highest use rates of marijuana at 11%, along with Vermont. He also highlights that an estimated 4.4 million individuals, nationwide, met criteria for marijuana dependence or abuse.⁴

While actual increases in health and social service programming are unknown, research and data provide a clear picture of the potential for increased problems associated with the legalization of marijuana.⁵ In states where medical marijuana is legal, marijuana abuse and dependence rates are almost twice as high as in those states without medical marijuana. Two states that have recently legalized marijuana, Washington and Colorado, report difficulty determining the potential costs. Results of a recent report to estimate the fiscal impact of marijuana legalization in Colorado were inconclusive and four national marijuana-policy experts wrote that "the future holds more unknowns than knowns."

The Division of Juvenile Justice has identified several areas in which costs could increase. Making possession of marijuana an offense that can be committed by minors but not adults creates a new status offense that is subject to specific rules governing the secure holding of juveniles. Violation of those rules could jeopardize federal funding currently received through the U.S. Office of Juvenile Justice and Delinquency Prevention. The initiative could also require increased treatment for substance abuse and mental health issues among youth held in detention.

With this very brief overview of concerns about increased marijuana use and legalization, the department anticipates potential costs to DHSS in the following areas, with estimates of per annual cost increases:

- Increased substance use, dependency and addictions treatment: \$200,000 or a 10% increase in treatment services for marijuana dependence;
- Increased mental health treatment services: \$1.1 million or a 5% increase in mental health treatment services;
- Increased physical health services through public health and our primary care providers: \$400,000;

³ Trends in Adolescent Substance Use and Perception of Risk from Substance Use. The NSDUH Report; from the Substance Abuse and Mental Health Services Administration (SAMHSA) and the National Survey on Drug Use and Health. January 3, 2013.

⁴ Marijuana Regulation: Considerations from State Substance Abuse Agency Directors. A presentation to the National Conference of State Legislatures (NCSL), Spring Forum. Robert Morrison, Executive Director, NASADAD. May 3, 2013.

⁵ Toolkit for States Facing "Medical" Marijuana & Marijuana Legalization Initiatives. Community Anti-Drug Coalitions of America (CADCA). Summer 2012.

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- Increased Medicaid costs to cover treatment and service needs: \$27,000 or a 10% increase in current marijuana treatment services covered by Medicaid;
- Increased enforcement of marijuana access by youth (similar to our current tobacco enforcement efforts). This expenditure will be determined upon the process developed for retail sale of marijuana: \$140,000 or a potential 20% increase;
- Increased prevention, education and early intervention programs for adolescents and young adults: 10% community grant increase and 20% ASAP service increase = \$390,000 + \$250,000;
- Increased child protection services for young children in homes with regular and persistent marijuana users (second hand marijuana smoke, neglect), and training for foster parents and staff: \$250,000;
- Increased juvenile justice services for youth engaged in marijuana use and dependency \$200,000; and
- Potential Human Resource activities related to employee use of marijuana and related policies \$30,000.

Estimated annual potential cost increases to the Department of Health and Social Services resulting from the legalization of marijuana are \$2,987,000. As indicated, these are estimates based on projected impacts; depending on the actual regulations, enforcement, and number of citizens who increase their use of marijuana, actual costs are likely to be different.

Estimate of Costs to the Alaska Department of Public Safety to implement the marijuana initiative

\$1,434,700

The ballot initiative would tax and regulate marijuana sales and allow Alaskans to cultivate marijuana for personal use. Persons 21 years of age or older could legally possess up to one ounce of marijuana or six marijuana plants (three of which could be mature), and could legally cultivate, sell and purchase marijuana through authorized marijuana-related facilities.

The cost to DPS to implement the law proposed by this initiative is based on the following assumptions regarding the legalization of marijuana in Alaska: it will lead to increased demand and usage and a consequent increase in the number of people driving while under the influence of this drug, and it will increase the illegal diversion and exportation of marijuana lawfully cultivated in Alaska.

Therefore, the costs to DPS are associated with the following:

1. Increasing the number Statewide Drug Enforcement Unit trooper investigators to target the diversion and exportation of marijuana lawfully grown in Alaska;
2. Requiring more troopers to receive Drug Recognition Expert (DRE) certification to enhance their ability to detect drivers impaired by marijuana and address the anticipated increase in DUI offenses;
3. Launching a public education and awareness campaign on the dangers of driving under the influence of marijuana; and

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4. Increasing the number of samples being sent out for toxicology analysis to detect the presence of marijuana in blood.

Division of Alaska State Troopers:

Marijuana is identified as a primary substance of abuse in Alaska, along with alcohol, cocaine, heroin, and prescription drugs. These substances are the focus of most drug enforcement efforts in Alaska.

DPS' Division of Alaska State Troopers (AST), Alaska Bureau of Investigation, Statewide Drug Enforcement Unit (SDEU) provides a leadership role in coordinating law enforcement's efforts to reduce the availability of illegal alcohol and controlled substances (including marijuana) throughout Alaska. The SDEU primarily supports six investigative drug task forces throughout Alaska. These teams are broken down by region as follows:

- Alaska Interdiction Task Force/Anchorage Enforcement Group (sponsored by the U.S. Drug Enforcement Administration)
- Fairbanks Area-wide Narcotics Team
- Mat-Su Narcotics Enforcement Team
- South Central Area-wide Narcotics Team
- Southeast Alaska Cities Against Drugs Task Force
- Western Alaska Alcohol and Narcotics Team

SDEU participates with and receives assistance from several federal investigative agencies involved in drug enforcement. These agencies include: the Drug Enforcement Administration (DEA); Federal Bureau of Investigation (FBI); U.S. Postal Inspection Service; Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE); and U.S. Immigration and Customs Enforcement (ICE).

The DEA awarded \$80,000 in Marijuana Eradication grant funds to the State of Alaska in calendar year 2012. These funds were used to cover some of the costs associated with marijuana eradication in the state. In calendar year 2012, funds were shared with the Anchorage, Craig, and Kenai police departments to cover overtime incurred by officers involved in eradication operations. The following table reports the activities supported through this grant:

2012 Domestic Cannabis Eradication/Suppression Statistical Report for Alaska								
Total Eradicated Outdoor Grow Sites	Total Cultivated Plants Outdoor	Total Eradicated Indoor Grow Sites	Total Cultivated Plants Indoor	Total Cultivated Plants (Outdoor & Indoor)	Bulk Processes Marijuana	Number of Arrest	*Assets Seized (Value)	Weapon Seizure
3	113	62	4,270	4,383	203	76	\$36,077	74

**Assets seized include paraphernalia items such as grow lights and digital scales and does not include marijuana plants.*

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Given that marijuana is illegal under federal law, legalization of marijuana in Alaska will have an impact on the collaborative working relationships DPS has with its federal counterparts and could potentially affect federal grant funds DPS and local law enforcement agencies receive for marijuana eradication and suppression efforts.

Should this initiative become law, it is practical to assume that arrests for simple possession will decrease. Even so, drug enforcement efforts are primarily targeted at individuals engaged in commercially cultivating and trafficking marijuana.

It is likely that sales of marijuana will not only be conducted by legitimate, taxpaying business people, but by criminal actors as well. Due to more potent levels of tetrahydrocannabinol (THC) in Alaskan-grown marijuana, the out of state demand for the drug is significant, and legalization could increase opportunities for marijuana export. AST predicts illegal commercial marijuana growing operations will continue to exist to meet this demand, skirting taxes and regulation in order to make the maximum profit. In addition, allowing the operation of marijuana cultivation facilities as proposed by the initiative actually increases the opportunity for Alaska's "legally grown" marijuana to be illegally diverted and exported.

DPS would require at least three additional Alaska State Trooper positions to target the illegal diversion and exportation of marijuana lawfully cultivated in Alaska. These positions would also work with DCCED's Alcoholic Beverage Control (ABC) board investigators on investigations into criminal activity associated with regulation of the marijuana industry.

The first year cost of three new trooper investigator positions is \$827,200; \$594,400 for ongoing funding to cover personal services, travel, training, and supplies (base increment), and \$232,800 to cover training at the academy, IT equipment, portable radios, office equipment, firearms and vehicles (one-time funding).

Though arrests for simple possession may decrease, the greater availability of marijuana will likely increase the number of adults consuming marijuana and the frequency with which it is consumed; consequently, the number of individuals driving under the influence of marijuana is expected to increase. Current practice is to administer standardized field sobriety tests to individuals suspected of driving under the influence (DUI). There is currently no chemical test that can be used in the field to detect marijuana impairment; the taking of a blood sample for purposes of determining the presence of a controlled substance (including marijuana) must be conducted at a medical facility.

To quickly and proficiently recognize the signs of marijuana impairment in drivers who are contacted, DPS proposes that more troopers become certified as drug recognition experts. A drug recognition expert (DRE), sometimes referred to as a drug recognition evaluator, is a police officer trained to recognize impairment in drivers under the influence of drugs other than, or in addition to, alcohol. Training and certification requirements are established by the International Association of Chiefs of Police and the National Highway Traffic Safety Administration. The cost for this training is approximately \$2,500 per trooper.

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Finally, DPS would launch a major public education and awareness media campaign focused on the dangers of driving under the influence of marijuana, similar to its current drunk driving and seat belt use campaigns. Using current media campaign expenditures as a base, the production and advertising costs for a DUI campaign focused on marijuana impairment are estimated to be \$500,000 per year for television, radio, print, and internet advertising.

Scientific Crime Detection Laboratory:

The DPS Scientific Crime Detection Laboratory (SCDL) provides drug identification services to Alaska's law enforcement agencies through its controlled substances section. Forensic scientists in the section analyze evidence items and conclusively identify a controlled substance or perform sufficient analysis to determine that no controlled substances are present.

Drug evidence submitted to the section can be analyzed through a variety of methods that include preliminary testing combined with confirmatory testing. Preliminary testing can include color testing, microcrystalline microscopic analysis, or physical identification of a tablet using a reliable source. The confirmation of the presence of a controlled substance is performed through one of two confirmatory tests, gas chromatography/mass spectrometry (GC/MS) or infrared spectrophotometry.

Following analysis, a forensic scientist interprets the instrumental data and prepares a report of his/her findings. This report is used in criminal court proceedings and often the forensic scientist is asked to provide expert testimony to the courts.

Marijuana, a schedule VIA controlled substance under AS 11.71.190, is commonly submitted by law enforcement agencies to the crime lab. Drug paraphernalia such as pipes and digital scales are also frequently submitted to the crime lab for analysis. Forensic scientists may also be called upon to analyze samples for federal agencies operating within Alaska for substances controlled under the federal Controlled Substances Act, which includes marijuana.

The crime lab seldom analyzes personal use quantities of marijuana. Rather, the evidence being submitted to the crime lab is indicative of distribution (trafficking) level quantities. As AST predicts that illegal commercial marijuana grow operations will continue despite any legalization of marijuana-related facilities, such as marijuana cultivation facilities and marijuana retail stores, the SCDL does not anticipate a decrease in submissions of evidence.

Alaska does not currently have an in-house drug toxicology program. The SCDL has a contract with the Washington State Patrol Toxicology Laboratory in Seattle for toxicology services and sends samples there for drug analysis. Based on the anticipated increase in marijuana impaired driving, DPS estimates that an average of 150 additional samples will be sent out for analysis each year. At an average cost of \$300 per sample, the increase in contract costs would be \$45,000 per year.

The estimated total cost to DPS for the implementation of this initiative is \$1,434,700 for the first year and \$1,201,900 for the second year. Following is a summary of the estimated costs:

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	First Year	Second Year
Three Trooper Investigator Positions	\$594,400	\$594,400
One-time position costs (academy training, IT equipment, office equipment, firearms, and vehicles)	\$232,800	\$0.0
Total Personal Service Costs	\$827,200	\$594,400
Marijuana DUI Media Campaign (production and advertising)	\$500,000	\$500,000
DRE Certification (\$2,500/trooper x 25 troopers annually)	\$62,500	\$62,500
Contractual increase for toxicology services (\$300/sample x 150 additional samples)	\$45,000	\$45,000
Total Contracts and Services Costs	\$607,500	\$607,500
TOTAL COSTS	\$1,434,700	\$1,201,900

Estimate of costs to the Alaska Department of Environmental Conservation to implement the marijuana initiative **\$0 - \$136,900**

The ballot initiative legalizes marijuana for use by persons 21 years of age and older. Section 17.38.080 states that the Department of Commerce, Community, and Economic Development (DCCED) may create a Marijuana Control Board; otherwise, the powers, duties, and responsibilities fall to the Alcoholic Beverage Control Board, located in the DCCED.

Normally, under AS 17.20, the DEC has responsibility to regulate food and food products. Marijuana or its derivatives, if considered a food, would fall under those provisions. However, under 17.38.090 of the proposed law, responsibility for regulating marijuana, including creating labeling requirements and health and safety regulations for the manufacture of marijuana, lies with the Alcoholic Beverage Control Board.

If additional food establishments were opened to create marijuana products (such as marijuana bakeries, etc.) along with additional food facilities opening up in the state, the Food Safety and Sanitation Program within DEC will need an additional Environmental Health Officer III position in Anchorage to review sanitation plans and conduct sanitation inspections for the increased number of facilities. If there is an increase in facilities, DEC anticipates needing one full time position at a total cost of \$136,900 (includes personal services, travel, contractual and supply expenses).

The estimates are done based on the cost during FY14 and do not reflect inflationary increases that will occur during the years it takes for this legislation to be passed, regulations to be written, and individuals to set up grow operations and potential food establishments. The cost will likely increase in future years.

Estimate of costs to the University of Alaska to implement the marijuana initiative **Indeterminate**

The University of Alaska has examined the initiative and due to the uncertainty around the

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initiative cannot provide a definitive estimate of the costs that it would incur at this time. However, should the initiative become law, it will directly impact the University's primary population – its students.

Areas of potential costs include but are not limited to:

As with Colorado and Washington, education will be needed for students, faculty, and staff about how the initiative would change University policies regarding possession or use of drugs on campus.

The Clery Act includes requirements for education on drug effects. The University would need to adjust its Clery documents, and there would potentially be some production costs associated with that effort. Additionally, there will likely be costs associated with revising University policies and regulations such as housing, employment and discipline.

It is anticipated that there would be additional costs associated with enforcement (the proposed law prohibits consumption in public) by UAA and UAF police departments as well as by administrators

There are potential legal costs associated with analyzing initiative and advising Major Administrative Units (MAUs).

There is likely to be some impact on the health care costs and rates for employees as well as a potential impact on insurance rates for the University.

The University envisions that they would very likely incur some research costs based on requests for information on the social and economic impacts of the initiative.

Estimate of costs to the Office of the Lieutenant Governor and the Division of Elections to implement the marijuana initiative \$80,257

Office of the Lieutenant Governor

Assuming the initiative is placed on the ballot, the minimum cost to conduct public hearings concerning the initiative in two communities in each of four judicial districts is estimated to be \$9,000. This number may be reduced if hearings are held on more than one initiative at a time.

Lt. Governor's Office estimate by category

<u>Travel</u>	<u>\$ 9,000</u>
Total	\$ 9,000

Estimated travel expenses include round-trip air transportation, per diem and other associated travel costs for the Lieutenant Governor and staff to travel to seven communities in Alaska. It is assumed one of the hearings would be in Anchorage which would not involve travel costs.

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Division of Elections

The minimum cost to the Division of Elections associated with certification of the initiative application and review of the initiative petition, excluding legal costs to the state and the costs to the state of any challenge to the validity of the petition, is estimated to be \$71,257.

Elections estimate by category

Personal Services	\$69,957
<u>Services</u>	<u>\$ 1,300</u>
Total	\$71,257

Personal services expenses associated with certification of the initiative application and review of the initiative petition:

Three full-time employees at 522 hours is \$29,200

8 temporary employees at 2,520 hours is \$40,757

Services expenses associated with certification of the initiative application and review of the initiative petition:

Printing of booklets is \$1,300.

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STATEMENT IN SUPPORT

Marijuana prohibition has been just as ineffective, inefficient, and counterproductive as alcohol prohibition. It's time for a more sensible approach.

Ballot Measure 2 will end the failed policy of marijuana prohibition in Alaska and replace it with a system in which:

- Personal use, possession, and limited home-growing of marijuana is legal for adults 21 and older; and
- Marijuana is regulated and taxed like alcohol.

Government studies and scientific research have consistently concluded that even the most potent marijuana, in concentrate or any other form, is far less harmful than alcohol to the consumer and to society. It's less addictive, less damaging to the body, and far less likely to trigger violent and reckless behavior.^{1,2} Adults who prefer to use marijuana instead of alcohol shouldn't be punished for making a safer choice.

There were 2,219 arrests for marijuana offenses in Alaska in 2010, of which 91% were for possession alone.³ Measure 2 would allow law enforcement to spend their time and limited resources addressing serious crimes instead of arresting and prosecuting adults for using a less harmful substance than alcohol.

Current marijuana prohibition laws force marijuana sales into the underground market where they're controlled by criminal enterprises. Measure 2 will replace the underground market with a tightly regulated system of licensed marijuana businesses that will create good jobs for Alaskans and generate tax revenue for the state and localities. It will also create business and ancillary industries, such as construction, real estate, and accounting. Localities will have the right to ban marijuana establishments.

State officials will create and enforce rules governing the production and sale of marijuana, such as testing, packaging, labeling requirements, and restrictions on advertising.

A regulated market will provide a safer environment for adults to purchase marijuana, and it will reduce their exposure to other illegal substances. It will also more effectively prevent teens from purchasing marijuana. It will remain illegal to sell or provide marijuana to minors, and proof of age will be required to purchase marijuana. Those selling marijuana in the underground market do not ask for ID.

In Colorado, where voters approved a similar measure in 2012, officials have reported no instances of businesses illegally selling marijuana to minors.⁴ Since the state began regulating hundreds of marijuana-related businesses in 2010, teen marijuana use hasn't increased, high school graduation rates have increased, and drop-out rates have decreased.^{5,6}

Implementation of the Colorado law hasn't contributed to an increase in crime, and violent crime decreased statewide in the first year in which marijuana was legal for adults.⁷ The number of fatal vehicle crashes dropped more than 25% during the first four months of legal marijuana sales compared to the same period the previous year.⁸

Statewide support for ending marijuana prohibition has increased in Colorado since legal adult marijuana sales began.⁹

Regulating marijuana works.

Christopher Rempert, Political Director and Treasurer/Campaign to Regulate Marijuana Like Alcohol

1 U.S. Institute of Medicine.

6 Colorado Department of Education.

2 World Health Organization.

7 Colorado Bureau of Investigation.

3 American Civil Liberties Union.

8 Colorado State Patrol.

4 Colorado Department of Revenue.

9 Public Policy Polling.

5 U.S. Centers for Disease Control.

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An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

STATEMENT IN OPPOSITION

Big Marijuana. Big Mistake. Vote No on 2

Against the best interests of our State, Proposition 2 seeks to legalize, commercialize, **advertise**, and industrialize marijuana and concentrated marijuana products (such as "shatter," "butane hash oil," and marijuana "Ring Pots") in Alaska. The Initiative is costly, extreme, premature, and will unduly harm Alaskan communities, businesses, families, and our youth. We urge you to Vote No on 2 because:

1. **The Initiative is Far Too Costly.** The State of Alaska estimates that this initiative could increase costs to State Government by over \$7 million/year, including increased costs for child neglect and DUIs. Also, the Alaska Association of Chiefs of Police estimates that the initiative will increase costs to small towns and cities by \$6 million. These are just the costs to state government and police. Based on evidence, **for every \$1 of taxes raised, the social, productivity, business, and health costs of substances like marijuana will be \$10.** Costs include: lost productivity, increased accidents, harm to youth, harm to families, and increased health costs.
2. **The Initiative Legalizes the Manufacturing, Advertising, Marketing, Transport and Consumption of Extreme Products like Shatter, Butane Hash Oil and Dangerous, Child-Friendly Edibles.** The Initiative specifically defines marijuana to include all marijuana concentrates and products. This would legalize the manufacturing, advertising, marketing, transport and consumption of such extreme products as 80-90% THC shatter, butane hash oil, and crumble. **We recommend all voters Google shatter and butane hash oil before voting.** Two people have already died in Colorado from child-friendly marijuana edibles, and emergency room visits have increased.
3. **The Initiative Eliminates the local option** for communities in Alaska to be dry on marijuana.
4. **This Initiative Will Not Eradicate the Illegal Trafficking of Marijuana.** If this initiative passes, there will be: illegal sales of marijuana to youth; illegal export of marijuana, and illegal sales to adults (just as there are in Colorado now after legalization).
5. **Do Alaskans Really Want Another Major Industry Promoting the Increased Use of Another Harmful Intoxicant? No.** There is so much evidence that marijuana is harmful to fetuses, developing brains, motivation, judgment (including while driving), mental health, lungs, hearts and more.
6. **Large Outside Interests are Funding the Initiative.** Follow the money. Big marijuana. Big mistake.
7. **Rates of Use by our Youth Will Increase.** Public Health science is very clear. If this initiative passes, youth use rates of marijuana, including shatter, butane hash oil, and edibles will increase.
8. **There is No Reason to Rush into Making a Mistake.** We deserve to see what happens in Colorado and make a more informed decision about what is best for Alaskans. Let's see how the **pervasive advertising of marijuana and marijuana products** works out; how many **lawsuits** there are from the marijuana industry; and what **marijuana lobbyists** do. Let's examine the increases in emergency room visits and deaths. There is no rush in Alaska to make a mistake.

The costs of this outside-funded initiative are far too great. Vote No on 2.

(Please Visit the Website: <http://www.bigmarijuanabigmistake.org/> for More Information)

Mike Williams, Akiak, Chair. Big Marijuana. Big Mistake.

Joe Byrnes, Fairbanks, Deputy Treasurer. Big Marijuana. Big Mistake.

Deborah Williams, Anchorage, Deputy Treasurer. Big Marijuana. Big Mistake

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An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

FULL TEXT OF PROPOSED LAW

"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.

The text of this bill is presented as submitted by petition sponsors.

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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;

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- (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

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- (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

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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

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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

The text of this bill is presented as submitted by petition sponsors.

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

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

The text of this bill is presented as submitted by petition sponsors.

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

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

The text of this bill is presented as submitted by petition sponsors.

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

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.

Follow-Up Items – From 1/22/2015 (S)STA Meeting

Compiled by Committee Aide / Distributed to Members

- 1) Senator Coghill asked what was meant by the use of the term “salt” in the definition of Marijuana (17.38.900 - Definitions). Mr. Bruce Schulte who testified before the Committee on behalf of the Coalition for Responsible Cannabis Legislation, said he would share a white-paper with the committee which included this answer. He said he would provide it by the following week. *It will be distributed to the committee once received.*

- 2) Senator Coghill asked a question during the meeting regarding how the marijuana initiative will be impacted by federal and state banking laws. DCCED/Banking and Securities *has been asked to provide either a written reply to this concern, or address it specifically at the next meeting on Tuesday, 1/27.*

- 3) Rachele Yeung of the Marijuana Policy Project was asked to provide US Department of Justice Memos to the Committee, which she referenced in her testimony.
 - a. The USDOJ 2013 Cole Memo on Marijuana Enforcement (attached) can be found at: <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf> . According to Ms. Yeung, “the question yesterday from Sen. McGuire was regarding transportation of marijuana by air or sea. Such action would not run afoul of any the enforcement priorities listed in the memo.”

 - b. The USDOJ 2014 Wilkinson Memo (attached) can be found at: <http://www.justice.gov/sites/default/files/tribal/pages/attachments/2014/12/11/policystatementregardingmarijuanaissuesinindiancountry2.pdf> . According to Ms. Yeung, that memo was “regarding federal enforcement of marijuana laws on tribal lands. It is meant to extend the same policy from the 2013 Cole Memo to tribal governments.”



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

Michele M. Leonhart
Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Ronald T. Hosko
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation



U.S. Department of Justice

Executive Office for United States Attorneys

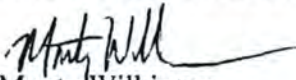
Office of the Director

Room 2261, RFK Main Justice Building (202) 252-1000
950 Pennsylvania Avenue, NW
Washington, DC 20530

MEMORANDUM - Sent via Electronic Mail

DATE: **OCT 28 2014**

TO: ALL UNITED STATES ATTORNEYS
ALL FIRST ASSISTANT UNITED STATES ATTORNEYS
ALL CRIMINAL CHIEFS
ALL APPELLATE CHIEFS
ALL OCDETF COORDINATORS
ALL TRIBAL LIAISONS

FROM: 
Monty Wilkinson
Director

SUBJECT: Policy Statement Regarding Marijuana Issues in Indian Country

ACTION REQUIRED: None. Information Only.

CONTACTS: Daniel Grooms
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With a number of states legalizing marijuana for use and production, some tribes have requested guidance on the enforcement of the Controlled Substance Act (CSA) on tribal lands by

the United States Attorneys' offices. With these requests in mind, the Attorney General's Native American Issues Subcommittee has reviewed the Memorandum from the Deputy Attorney General, dated August 29, 2013, regarding marijuana enforcement ("Cole Memorandum") and considered its impact on Indian Country.

The Cole Memorandum provides guidance to United States Attorneys on the proper prioritization of marijuana enforcement in their districts given the number of states that have moved to legalize marijuana for medicinal, agricultural, or recreational use. Specifically, the Cole Memorandum lists eight federal law enforcement priorities where the Department will focus its limited investigative and prosecutorial resources in all states. These eight priorities are as follows:

- 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 cover or pretext for the trafficking of other illegal drugs or 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.

The Cole memorandum contains the additional directive that "nothing herein precludes investigation or prosecution, even in the absence of any one of the factors . . . , in particular circumstances where the investigation and prosecution otherwise serve an important federal interest."

Indian Country includes numerous reservations and tribal lands with diverse sovereign governments, many of which traverse state borders and federal districts. Given this, the United States Attorneys recognize that effective federal law enforcement in Indian Country, including marijuana enforcement, requires consultation with our tribal partners in the districts and flexibility to confront the particular, yet sometimes divergent, public safety issues that can exist on any single reservation.

Nothing in the Cole Memorandum alters the authority or jurisdiction of the United States to enforce federal law in Indian Country. Each United States Attorney must assess all of the threats present in his or her district, including those in Indian Country, and focus enforcement efforts based on that district-specific assessment. The eight priorities in the Cole Memorandum will guide United States Attorneys' marijuana enforcement efforts in Indian Country, including in the event that sovereign Indian Nations seek to legalize the cultivation or use of marijuana in Indian Country. Consistent with the Attorney General's 2010 Indian Country Initiative, in

evaluating marijuana enforcement activities in Indian Country, each United States Attorney should consult with the affected tribes on a government-to-government basis. When in the judgment of a United States Attorney, significant issues or enforcement decisions arise that may implicate this policy statement, each United States Attorney should keep the Executive Office for United States Attorneys, the Office of Tribal Justice, and the Office of the Deputy Attorney General informed of those matters, in advance of any determination on how to proceed, in order to keep the Department's leadership apprised of significant issues and to maintain consistency throughout the Department.

cc: All United States Attorneys' Secretaries

**Advisory Board on Alcoholism
and Drug Abuse**



Alaska Mental Health Board

ALASKA MENTAL HEALTH BOARD
ADVISORY BOARD ON ALCOHOLISM AND DRUG ABUSE
431 NORTH FRANKLIN STREET, SUITE 200
JUNEAU, ALASKA 99801
(907) 465-8920

January 22, 2015

Senator Bill Stoltze, Chairman
Senate State Affairs Committee
Alaska State Capitol, Room 125
Juneau, Alaska 99801

Re: Information Related to January 22, 2015 Committee Hearing

Senator Stoltze,

The Advisory Board on Alcoholism and Drug Abuse offers the enclosed information to support your committee's consideration of implementation of Ballot Measure 2/A.S.17.38. The Advisory Board on Alcoholism and Drug Abuse (ABADA) is the state planning and advisory board for substance abuse in Alaska. ABADA has a statutory mandate to "act in an advisory capacity to the legislature, the governor, and state agencies" in matters related to alcoholism and drug abuse (A.S. 44.29.140(a)). We provide this information pursuant to these statutory responsibilities. We make no recommendations, instead offering objective information in response to questions and issues raised during this morning's hearing. Our board members and staff are available as a resource to you and your colleagues as you consider these and other issues related to Ballot Measure 2 and A.S. 17.38.

Local Control

Committee members asked about how local communities can respond to legalization of marijuana enterprises. While communities cannot prohibit personal use or cultivation as described in A.S. 17.38.020-17.38.030,¹ Ballot Measure 2 does provide that local governments can prohibit or regulate commercial marijuana enterprises through an ordinance or voter initiative (A.S. 17.38.110(a)-(b)). How local governments enforce these decisions is limited. Ballot Measure 2 expressly limits violations of local ordinances and regulations related to commercial marijuana enterprises to civil penalties (A.S. 17.38.110(b)).

In addition to the powers granted in the new laws, local governments have existing authority over areas related to marijuana enterprises. For example, municipalities can levy taxes and special assessments (A.S. 29.35.010(6)). Boroughs can levy property, sales, and use taxes (A.S. 29.35.170). First and second class boroughs and first and second class cities can regulate land use (A.S. 29.35.180; A.S. 29.40.010; A.S. 29.35.260).

¹ See also *Ravin v. State*, 537 P.2d 494 (Alaska 1975).

Local governments have the opportunity to make decisions based on local principles and values related to marijuana cultivation, production, sale, and use. Considerations for local governments include:

- How does marijuana cultivation and/or production fit into existing land use plans and zoning ordinances? Are changes to land use/zoning codes necessary to achieve the goals of the local community related to commercial marijuana enterprises?
- Do existing licensing standards refer to similar business or production enterprises in defining health and safety standards for day care facilities? Are changes to licensing standards necessary to achieve the goals of the local community related to commercial marijuana enterprises?
- Do existing taxes and assessments meet the goals of the local community related to commercial marijuana enterprises? Are changes to the local tax structure needed to meet those community goals?

Driving Under the Influence of or Impaired by Marijuana

Committee members asked about setting standards for driving under the influence of marijuana. Ballot Measure 2 does not make it legal to drive under the influence of marijuana.² However, the newly enacted A.S. 17.38 does not establish a legal standard for the crime of driving under the influence of marijuana, nor does it address the active use of marijuana while driving or riding in a car.

Prevalence of Driving Under the Influence of Marijuana: In the 2007 study performed by the National Highway Traffic Safety Administration, 4.46% of daytime drivers and 7.66% of nighttime drivers tested positive for marijuana alone in oral fluid samples.³ The most frequently identified individual drug, other than alcohol, was marijuana.⁴ This may underestimate the overall prevalence of drivers under the influence of marijuana during this study because drivers that tested positive for multiple drugs were not included in these percentages.⁵ (It is important to note that this data reflects the prevalence of marijuana use among drivers and not the incidence of impaired driving.)

According to the 2013 National Survey on Drug Use and Health (NSDUH), 9.9 million people – 3.8% of persons age 12 and up – reported that they had driven under the influence of illicit drugs, including cannabis, within the past year.⁶ This is consistent with the 2012 NSDUH prevalence data (3.9% of persons age 12 and up).⁷ The 2013 NSDUH showed a decrease among the group

² A.S. 17.38.120(b) provides that driving under the influence of marijuana remains subject to existing impaired driving laws.

³ 2007 National Roadside Survey of Alcohol and Drug Use by Drivers, National Highway Traffic Safety Administration, U.S. Department of Transportation.

⁴ *Id.*

⁵ *Id.*

⁶ *Results from the 2013 National Survey on Drug Use and Health: Summary of National Findings*, Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services, at 31.

⁷ *Id.*

with the highest prevalence: 18 to 25 year-olds (10.6% reported in 2013 compared to 11.9% reported in 2012).⁸

Effect of Marijuana on Driving: Research and study of how marijuana and its active ingredients affect people has shown that individuals can experience impairments in attention and concentration, time and distance perception, hand-eye coordination, reaction time, vigilance, short-term memory, and decision making.⁹ Acute cannabis consumption is associated with an increased risk of a motor vehicle crash, especially for fatal collisions.¹⁰

Most laboratory research of the effects of marijuana has been conducted with low doses of marijuana.¹¹ Research shows that a person's level of impairment is dose-related and can last two to four hours after consumption.¹² This is relevant to Alaska law makers, as recreational use of marijuana may exceed the low-doses used in laboratory studies.

Concurrent Use: Use of marijuana and alcohol together exacerbates the effects of – and impairments caused by – each substance. Driving has been found to be impaired with use of both substances more than if either substance were used alone.¹³ It may be appropriate to set variable tetrahydrocannabinol (THC) concentration limits based on simultaneous concentrations of blood alcohol levels. For example, if a blood alcohol concentration is found to be 0.03% or more, the limit of acceptable THC blood or fluid concentration may be lower than if THC were the only regulated substance detected in the body.¹⁴ Ohio has enacted limits to marijuana metabolites of 5 nanograms per milliliter of blood “when the person is under the influence of alcohol, a drug of abuse, or a combination of them” as a way of addressing concurrent use.¹⁵

Intoxication and Impairment Definition and Limits: Both Colorado and Washington have set limits for driving while using recreational marijuana at five nanograms of THC per milliliter (5ng/ml) of whole blood.¹⁶ Blood concentrations of THC 5ng/ml or higher are punished in the same way as other substance use infractions. In Nevada, it is unlawful to drive with more than 2ng/ml marijuana per milliliter of blood.¹⁷ Ohio has adopted the 2ng/ml limit as well.¹⁸ Research has found that drivers with whole blood concentrations below 5ng of THC per milliliter of blood

⁸ *Id.*

⁹ *Marijuana and Driving - Research Brief*, National Cannabis Prevention and Information Centre (Australia), republished by the University of Washington Alcohol and Drug Abuse Institute, reporting findings from laboratory studies of the effects of marijuana.

¹⁰ *Acute cannabis consumption and motor vehicle collision risk: systematic review of observational studies and meta-analysis*, Asbridge et al. *THE BMJ (formerly THE BRITISH MEDICAL JOURNAL)*, February 9, 2012.

¹¹ *Marijuana and Driving - Research Brief*, NCPIC.

¹² *Id.*

¹³ *Developing Science-Based Per Se Limits of Driving Under the Influence of Cannabis (DUI/C); Findings and Recommendations by an Expert Panel*, Grotenherm et. al. 2005.

¹⁴ *Id.*

¹⁵ ORC 4511.19(j)(viii)(I).

¹⁶ RCW 46.61.504(1)(b); CRS 42-4-1301(6).

¹⁷ NRS 482.110(3)(g). It is unlawful to drive with more than 5 nanograms of marijuana metabolite per milliliter of blood. NRS 482.110(3)(h).

¹⁸ ORC 4511.19(j)(vii).

are no more likely to crash than sober drivers, though few studies have been conducted with drivers having high blood concentrations of THC.¹⁹

Setting a limit to the amount of THC or marijuana metabolites a person can have in his blood (or urine) does not equate to a ban on using marijuana while driving. The Washington State Legislature is currently considering legislation to address active use while driving (SB 5002 was filed December 5, 2014 and was first heard by the Senate Committee of Law and Justice January 15, 2015).

Testing Drivers for THC: Testing for THC can be done by testing saliva, urine, or blood. The need for a body fluid based test limits the options for effective roadside testing with current technology. Some jurisdictions (Los Angeles, Arkansas, Australia) have implemented the use of oral swab (saliva) tests for suspected driving under the influence. However, marijuana proponents have argued that blood tests are the only effective test for marijuana. Therefore, the protocols for testing by Alaska law enforcement and the designation of (and possible regulation of) laboratories will be required.

Workplace Safety, Drug Policies

The issue of how employers can ensure workplace safety after Ballot Measure 2 arose during this morning's hearing. Employers retain the right to restrict use of marijuana on the premises and to have policies that restrict use of marijuana by employees (A.S. 17.38.120(a)). The impact of Ballot Measure 2 on workplace safety policies will vary depending on the industry and the nature of the work performed.

In the transportation industry, the federal standards for drug-free workplaces still apply. The U.S. Department of Transportation has promulgated regulations with which air, road, marine, and other carriers must comply.²⁰ These include having strong drug and alcohol testing programs and protocol for removing employee who violate drug-free workplace standards from safety-sensitive duties.

Alaska employers operating with contracts or grants from the federal government are still subject to the requirements of the Drug-Free Workplace Act of 1998.²¹ Any Alaska business, non-profit, school district, governmental entity, or other recipient of federal dollars must continue to certify and maintain a drug-free (inclusive of marijuana, still a controlled substance under federal law) workplace.²² Employers not subject to federal oversight can maintain or establish drug-free workplace and safety policies and procedures. There are guidelines and standards for these policies, to ensure that employers and employees are treated equitably.

¹⁹ *Developing Science-Based Per Se Limits of Driving Under the Influence of Cannabis (DUIC); Findings and Recommendations by an Expert Panel*, Grotenherm et. al. 2005.

²⁰ See 49 CFR Part 40.

²¹ See 41 USC 81.

²² See 41 USC §8102 (contractors); 41 USC §8103 (grantees).

Definition of “Public Use”

Alaska is not alone in grappling with what “public” means when applied to marijuana use. Ballot Measure 2/A.S. 17.38 protects the right of personal cultivation and use/consumption – in private and away from public view.²³ There are no similar provisions regarding where a commercial marijuana cultivation facility may be located, and no proscription on public or plain sight growing operations. Whether express legislation, regulation, or ordinances are needed to meet state and community public health objectives should be considered.

Defining what “in public” means for the purposes of A.S. 17.38.020 is not necessarily a *pro forma* exercise. Analogies to prohibitions on drinking alcohol outside licensed premises or smoking in restaurants may not serve. Colorado’s Implementation Task Force was unable to agree on a recommendation as to what “public consumption” means under Amendment 64.²⁴ Whether use/consumption is permitted on front porches or back yards, social clubs, and other venues that could be considered private and public at the same time has plagued Colorado authorities.²⁵ Local jurisdictions in Colorado have acted, but not uniformly.²⁶ We see the same confusion arising here in Alaska, as communities discuss how they will respond to Ballot Measure 2.²⁷

The definition of “public view” is better defined by A.S. 17.38.030(a)(1): a place that cannot be seen “without the use of binoculars, aircraft, or other optical aids.” This provision is limited to personal cultivation of marijuana, and not expressly extended to locations for licensed marijuana cultivation facilities. This may be due to the expectation that commercial growing will be indoors rather than in an open field (prevalence of indoor cultivation operations is discussed below).

State and local governments may consider whether clarification of permissible locations for commercial marijuana cultivation and production facilities may operate is necessary. Review of where communities allow alcohol breweries and distilleries to operate shows a desire to sequester these operations away from residential and public areas. In Anchorage, breweries are considered “industrial” operations²⁸ suitable for light industrial districts.²⁹ The same is true in Fairbanks³⁰ and in Juneau.³¹

²³ A.S. 17.38.020(d); A.S. 17.38.030(a)(1).

²⁴ See *Marijuana Legalization in Colorado: Learned Lessons*, Blake, D. and Finlaw, J. HARVARD LAW AND POLICY REVIEW, Vol. 8-2 at 359. (August, 2014) at 374.

²⁵ *Id.* at 374-375.

²⁶ *Id.* citing *Denver Council Flips Vote on Pot Smoking in Front Yards*, Meyer, J. DENVER POST (December 3, 2013); *Club Ned Cannabis Cafe to Open in Nederland*, Byars, M. DAILY CAMERA (Boulder, March 7, 2014); *Marijuana Social Club Back Open in Colorado Springs After Panel Grants Appeal*, Wells, G. THE GAZETTE (Colorado Springs, February 21, 2014).

²⁷ See *Marijuana Town Hall: Sitkans Offer Ideas on Cafes, Kids*, Woolsey, R., KCAW-SITKA (January 21, 2015).

²⁸ AMC 21.05.060(b)(3)(a).

²⁹ AMC 21.40.200 I-1(B)(2)(b).

³⁰ FNSBC 18.38.020(A)(6).

³¹ CBJ Code 49.25.240.

Regulation of Potency and Quality

Committee members spoke to many public health considerations related to marijuana enterprise, and specifically to product quality. The potency of marijuana is measured by the amount of the psychoactive compound, tetrahydrocannabinol (THC), present.³² The 2009 World Drug Report released by the United Nations Office of Drugs and Crime reports that the potency of marijuana in the United States has increased over time, with an average potency of 10% in 2008.³³ The University of Mississippi, with funding from the National Institute on Drug Abuse, has conducted a Potency Monitoring program analyzing cannabis preparation. It reported an increase in potency of confiscated cannabis, from 3.4% in 1993 to 8.8% in 2008.³⁴

The 2009 World Drug Report lists multiple factors that influence the potency of the product including the part of the plant used and the cannabis product type. The method of cultivation also affects the product potency. Higher potencies reported when growth conditions are optimized through indoor, hydroponic operations (a prevalent cultivation method in Alaska). Most potency data are obtained via the testing of samples seized by law enforcement, thus the representativeness of these samples is difficult to determine. Proper sample storage is required as exposure to light and air initiates the conversion of THC to cannabinol, therefore samples stored improperly will yield test results of inaccurately low potencies.

A.S. 17.38 does not specify requirements for the regulation of the potency of marijuana sold in Alaska. A.S. 17.38.090(a)(6) states that labeling requirements for marijuana and marijuana products sold or distributed by a marijuana establishment shall be included in the regulations adopted by the board. A.S. 17.38.090(a)(7) states that regulations adopted by the board shall include health and safety regulations and standards for the manufacture of marijuana products and the cultivation of marijuana.

A.S. 17.38 does not specify requirements for enforcement of potency levels of marijuana sold in Alaska. Colorado selected potency testing as a regulatory feature.³⁵ The state Department of Public Health and Environment inspects, and the Department of Review certifies, these testing facilities. All retail marijuana cultivation facilities and retail marijuana product manufacturing facilities are required to have at least 10% of their harvest or production batches sampled each year for potency or contaminants.³⁶ The state of Colorado requires the documented destruction of the entire batch of product that has failed a potency test. If the proper corrective actions are not taken after a failed potency test, a license violation may be issued on the basis of public safety.³⁷

Regulation of the quality of marijuana products sold for consumption by eating or drinking would appear to rest on the same public health and safety interests as regulation of other foods

³² 2009 World Drug Report: *Why Does Cannabis Potency Matter?* United Nations Office on Drugs and Crime, at 97.

³³ *Id.*

³⁴ *Potency Trends of D9-THC and Other Cannabinoids in Confiscated Cannabis Preparations from 1993 to 2008*, Mehmedic et al. JOURNAL OF FORENSIC SCIENCES (September 2010).

³⁵ CR 1502-1503.

³⁶ R 712 – Retail Marijuana Testing Facility: Mandatory Sampling and Testing Program (F)(4) at 43.

³⁷ R 1507 – Retail Marijuana Testing Program: Contaminated Product and Failed Test Results (C) at 57.

and beverages. For example, the State of Colorado requires contaminant testing on all retail marijuana products by a licensed, certified Retail Marijuana Testing Facility. Under CR 1501 C, this testing must include examination for the presence of (1) microbes, (2) mold and mildew, (3) filth, and (4) residual solvents. This type of contaminant testing should be considered by the State of Alaska to protect public health of consumers.

Existing law in Alaska may already provide for this public health and safety need. The Alaska Food, Drug, and Cosmetic Act (A.S. 17.20) governs many aspects of the production and sale of foods. Marijuana products sold with the intent that they be eaten or drunk fall within the scope of the Act,³⁸ which may limit what sorts of products may be sold or distributed to the public. The Department of Environmental Conservation (DEC) enforces this Act, and has authority to promulgate regulations pursuant to the Act.

A.S. 17.20.020 prohibits adulterated food. Adulterated food is defined as food that “bears or contains a poisonous or deleterious substance that may render it injurious to health.”³⁹ The standard for “poisonous or deleterious” is a quantity that has been deemed unsafe and therefore limited by regulation.⁴⁰ Sale of adulterated foods is expressly prohibited.⁴¹ To ensure quality and safety, DEC has free access to all premises where foods are made, packed or stored to conduct inspections and take samples for inspection.⁴² Under current Alaska law, violations of the laws related to food safety can result in civil (A.S. 17.20.315) or criminal penalties. Violations made with criminal negligence are a class A misdemeanor (A.S. 17.20.305; A.S. 11.81.900).

Title 3 of the Alaska Statutes governs the production and sale of agricultural products in Alaska. A.S. 03.05.040 gives the Department of Natural Resources (DNR) and DEC the power to conduct inspections of “agricultural products” and premises where “agricultural products are or have been raised, housed, kept, stored, processed, or sold.” Marijuana is defined as all parts of the cannabis plant, which is clearly an agricultural product within the broad definition at A.S. 03.05.100. Marijuana growers, processors, testers, and producers may all be subject to Title 3 and the regulations promulgated by DNR and DEC.

Regulation of Promotion and Packaging

Committee members asked many questions about the commercial sale of foods and drinks made with marijuana or marijuana derivatives. Existing state law is applicable to these newly legal products. The Alaska Food, Drug, and Cosmetic Act (A.S. 17.20) also governs advertising related to the sale of foods, which would include comestibles containing marijuana.

Mislabeling of food products is expressly prohibited (A.S. 17.20.290(a)(1).) The requirement that labels be complete and accurate provides a basis for ensuring that consumers know and understand that a food product contains marijuana, what the THC content is, and what health and

³⁸ A.S. 17.20.340.

³⁹ A.S. 17.20.020(a).

⁴⁰ A.S. 17.20.030.

⁴¹ A.S. 17.20.290(a)(1).

⁴² A.S. 17.20.200.

safety risks there may be in the consumption of the product. Colorado has promulgated extensive regulations for labeling of marijuana comestibles.⁴³

False advertising is also expressly prohibited. (A.S. 17.20.290(5).) Determination of whether advertisements are false or misleading is governed by A.S. 17.20.300, which expressly requires consideration of:

the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences that may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement or under customary or usual conditions of use.

False or misleading marketing and other unfair business practices are prohibited by A.S. 45.50.471. Unfair or deceptive business practices include misrepresenting the quality, standard, or grade of goods and intentionally using “deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact” that others rely upon in connection with the sale or advertisement of goods (A.S. 45.50.471(6), (12)). Violations of the laws related to true and accurate advertising can result in civil or criminal penalties. Violations made with criminal negligence are a class A misdemeanor (A.S. 17.20.305; A.S. 11.81.900).

Federal Issues – Financial Institutions

During the hearing today, there were questions related to the conflict between state law legalizing marijuana industry and federal laws related to national drug policy. The U.S. Department of Justice (DOJ) provided express guidance on August 29, 2013 to all federal assistant attorneys general related to continued federal enforcement of the Controlled Substances Act. In a memorandum issued by Deputy Attorney General James Cole (“Cole Memo”), the prosecutorial priorities of the DOJ were affirmed as preventing:

- distribution of marijuana to minors;
- revenue from marijuana sales from going to criminal enterprises;
- diversion of marijuana from states where it is legal under state law to states where it is not;
- use of state-authorized marijuana activity to conceal illegal drug trafficking;
- violence and use of firearms in marijuana enterprises;
- impaired driving and worsening of other adverse public health consequences of marijuana use;
- growth of marijuana on public lands and the attendant public safety hazards; and
- possession of marijuana on federal property.⁴⁴

⁴³ CR 1004.5 – Retain Marijuana Product Packaging and Labeling Requirements (effective February 1, 2015).

⁴⁴ “Guidance Regarding Marijuana Enforcement,” Cole, J. U.S. Department of Justice (August 29, 2013).

The Cole Memo reaffirms the federal authorities' reliance on state and local law enforcement to deal with marijuana activities outside of these priorities (specifically mentioning personal possession and use of small quantities in private settings). However, it also asserts that states "that have implemented systems that provide for regulation of marijuana activity 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."⁴⁵ In jurisdictions that manage to do this, "enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity."⁴⁶ The Cole Memo warns that, in jurisdictions that cannot meet this expectation, "the federal government may continue its own enforcement efforts and even "seek to challenge the regulatory structure itself."⁴⁷

Ensuring that marijuana enterprises are not inadvertently forced to operate as cash-only businesses is a priority for federal and state governments. Certain public safety issues arise from cash-only business operations. Accounting for tax purposes is made more complicated for both businesses and regulatory/revenue agencies when the operations only use cash. Payroll and the tracking of employment-related taxes and assessments become problematic without access to financial institutions' services. Recognizing that the unexpected lack of access to bank services was a significant impediment to implementation of state laws – and a contributor to the very crimes that the DOJ had prioritized for prevention in the Cole Memo – the U.S. Treasury Department provided express guidance to financial institutions in February 2014.⁴⁸ Based on that guidance, financial institutions can offer services to marijuana enterprises and remain in compliance with their obligations under the Bank Secrecy Act.

Financial institutions retain the discretion as to whether to provide services to marijuana enterprises. While financial institutions are prohibited from refusing to provide services due to discrimination on the basis of a suspect class, they are encouraged to consider the institution's business objectives, evaluation of risks associated with offering a particular financial product or service, and capacity to manage those risks effectively.⁴⁹ The Treasury Department encouraged financial institutions to

“conduct customer due diligence that includes: (i) verifying with the appropriate state authorities whether the business is duly licensed and registered; (ii) reviewing the license application (and related documentation) submitted by the business for obtaining a state license to operate its marijuana-related business; (iii) requesting from state licensing and enforcement authorities available information about the business and related parties; (iv) developing an understanding of the normal and expected activity for the business, including the types of 3 products to be sold and the type of customers to be served (e.g., medical versus recreational customers); (v) ongoing monitoring of publicly available sources for adverse information about the business and related parties; (vi)

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ “BSA Expectations Regarding Marijuana-Related Business,” U.S. Department of Treasury (February 14, 2104).

⁴⁹ *Id.*

ongoing monitoring for suspicious activity, including for any of the red flags described in this guidance; and (vii) refreshing information obtained as part of customer due diligence on a periodic basis and commensurate with the risk."⁵⁰

The guidance on how to offer services to marijuana enterprises in a responsible manner specifically reiterates the obligation of financial institutions to file reports on accounts with suspicious activity. The Treasury Department has created "Marijuana Limited" Suspicious Activity Reports for filing on accounts that, after due diligence, the financial institution reasonably believes is not engaged in activity identified in the Cole Memo as a federal priority for prosecution.⁵¹ For those accounts the financial institution has reason to believe are part of an effort to conceal proceeds of illegal activities or other unlawful purposes, a "Marijuana Priority" Suspicious Activity Report is required.⁵² Currency transaction reports on transactions of more than \$10,000 cash are always required of marijuana enterprises.⁵³ Banks in Colorado were not reassured by the Treasury Department's guidance.⁵⁴ Many financial institutions are waiting for federal legislation, such as the Marijuana Businesses Access to Banking Act (H.R. 2652, introduced by Rep. Ed Perlmutter on July 10, 2013 but never heard).

Alaska regulates banks under A.S. 06. Major changes to the state's statutory and regulatory framework may not be warranted, though there are areas for consideration by policy and law makers. For example, A.S. 06.05.240 permits a state bank acquisition of property to satisfy or protect a loan. While this is typically a business decision to be made by the financial institution, there are public health and safety considerations involved in whether a bank should take marijuana enterprises' assets – specifically the marijuana plants and products themselves – to secure a loan. Thus, there may be a need for DCCED and the Alaska Legislature to review the Alaska Banking Code and regulations promulgated under such authority to assure that state law and policy align with federal and state public health and safety objectives.

Regulatory Entity

Committee members explored whether a separate regulatory board for marijuana enterprises is needed. Regarding whether marijuana enterprises should be regulated by the Alcoholic Beverage Control Board or a new board, ABADA takes no position. As noted above, regulation of marijuana enterprises will fall within the jurisdiction of multiple executive branches. In deliberations on how to proceed, the Legislature may consider the following issues and points of information.

Based on Alaska's experience with unlawful marijuana enterprises, it is expected that the demand for marijuana products will spur significant cultivation of marijuana plants and manufacturing of marijuana derivatives and products:

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Colorado Bankers Association Statement Regarding DOJ and Treasury Guidance on Marijuana and Banking*, last visited November 10, 2014 at <http://www.coloradobankers.org/?page=60&terms=%22marijuana%22>.

Demand for Alaskan-grown marijuana continues to be high as a result of its exceptional tetrahydrocannabinol (THC) content. Because Alaskan produced marijuana is extremely high quality; Alaska is considered a marijuana exporting state.

Alaska State Troopers 2013 Annual Drug Report

The Alaska State Troopers (AST) Statewide Drug Enforcement Unit (SDEU) reports that “most [unlawful] commercial marijuana growing operations are found in communities along Alaska’s road system,” and that these operations include “extremely sophisticated indoor growing operations.”⁵⁵ Between 2011 and 2013, 199 marijuana grow operations were closed down by state and local law enforcement.⁵⁶ During that same period, over 15,000 marijuana plants and nearly 1,000 pounds of processed marijuana have been seized by state and local law enforcement agencies.⁵⁷ These figures probably do not represent the entire extent of unlawful marijuana production in Alaska, and so may or may not provide an estimate of the demand for lawful production. These figures do inform the discussion of how State and local governments will address the significant public health and safety interest in regulating not just how much marijuana is cultivated or produced, but also ensuring the safety and quality of the raw and finished products.

It is reasonable to expect that these and other growing operations not closed down by law enforcement will seek licenses to operate lawfully. Using the number of known unlawful growing operations between 2011 and 2013, an average of at least 66 applications for cultivation licenses can reasonably be expected, with unknown numbers of applications for production and retail licenses. As a point of reference, the ABC Board currently has three dedicated licensing staff responsible for an average of 149 licenses processed annually.⁵⁸

In conclusion, the Advisory Board on Alcoholism and Drug Abuse appreciates the Legislature’s efforts to implement Ballot Measure 2/A.S. 17.38 in the best interests of all Alaskans, and stand ready to support those efforts.

Sincerely,



J. Kate Burkhart
Executive Director

cc: Members, Senate State Affairs Committee
Members, Advisory Board on Alcoholism and Drug Abuse

⁵⁵ Alaska State Troopers, Alaska Bureau of Investigation Statewide Drug Enforcement Unit, 2013 Annual Drug Report at 10.

⁵⁶ *Id.* at 11.

⁵⁷ *Id.* The U.S. Drug Enforcement Agency seized another 45.1 pounds of marijuana during this time. *Id.* at 15.

⁵⁸ Review of public reports of active alcoholic beverage licenses published by the Department of Revenue showed that 147 licenses expired in 2013, 144 licenses expired in 2014, and 157 licenses expired in 2015. License queries run November 11, 2014 at <https://online-tax.alaska.gov/ATP/WebDoc/#4> and <http://www.tax.alaska.gov/programs/programs/queries/alcohol/license/license.aspx?60165>.



Coalition for Responsible Cannabis Legislation

Marijuana Products, Extracts, Derivatives, and Regulations (Overview and recommendations)

Prepared by: CRCL Board Members

January 28 2015



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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 plant (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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