ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9859 HOUSE JUDICIARY

HB

212

Alaska State Legislature

House of Representatives
House Judiciary Committee

SPONSOR STATEMENT FOR HB 212

DATE: April 30, 1999

TO: Suzi Lowell
Chief Clerk

FROM: Representative Pete Kott, Chair

Subject: HB 212

The litigation surrounding anti-Trust and Unfair Trade Practices as well as the Consumer Protection Act are long, and often arduous matters, which require a high amount of discretion and sensitivity. This bill reinforces the confidential nature of such cases by prohibiting certain public disclosures during, and even after, an investigation. Due to the highly complex and controversial nature of anti-Trust litigation, we urge your support on HB 212.

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MEMORANDUM April 30, 1999

SUBJECT: Sectional Summary of HB 212 (Work Order 21-LS0893\A)

TO: Representative Pete Kott
Attn: Cory

FROM: Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Amends the confidentiality section of the state's Unfair Trade Practices and Consumer Protection Act. Prohibits the attorney general from making the name of persons alleged to have committed unlawful trade practices public after an investigation as well as during an investigation. Adds investigation records and intelligence information of the attorney general that are created in the course of an investigation to the records that are not considered public records available for public inspection or copying. Establishes that the investigation and intelligence information are not considered public records during or after the investigation.

Section 2. Adds a new section to the article on monopolies and restraint of trade. The article provides that investigation records obtained or created by the attorney general during an investigation are not considered public records during or after the investigation. Allows the attorney general to issue public statements warning the public about present or future violations of the article.

If I may be of further assistance, please advise.

TLB:glc
99-219.glc

HB 213

LAWS OF ALASKA

1998

Source
Ballot Measure No. 8

AN INITIATIVE

Relating to the medical uses of marijuana for persons suffering from debilitating medical conditions.

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

THE INITIATIVE FOLLOWS ON PAGE 1

Actual Effective Date: March 4, 1999

Medical Uses of Marijuana for Persons Suffering from Debilitating Medical Conditions Act.

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

(b) Marijuana is a schedule VIA controlled substance <u>except for marijuana possessed for medical purposes under AS 17.37</u>.

condition, approved by the department, pursuant to its authority to promulgate regulations or its approval of any petition submitted by a patient or physician under AS 17.37.060;

(3) "department" means the Department of Health and Social Services;

(4) "medical use" means the acquisition, possession, cultivation, use and/or transportation of marijuana and/or paraphernalia related to the administration of such marijuana to address the symptoms or effects of a debilitating medical condition only after a physician has authorized such medical use by a diagnosis of the patient's debilitating medical condition;

(5) "patient" means a person who has a debilitating medical condition;

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

(7) "primary care-giver" means a person, other than the patient's physician, who is 18 years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition;

(8) "prisoner" means a person detained or confined in a correctional facility, whether by arrest, conviction, or court order, or a person held as a witness or otherwise, including municipal prisoners held under contract and juveniles held under the authority of AS 47.10;

(9) "registry identification card" means a document issued by the department which identifies a patient authorized to engage in the medical use of marijuana and the patient's primary care-giver, if any;

(10) "usable form" and "usable marijuana" means the seeds, leaves, buds, and flowers of the plant (genus) Cannabis, but does not include the stalks or roots;

(11) "written documentation" means a statement signed by a patient's physician or copies of the patient's pertinent medical records.

Sec. 17.37.080. Short title. AS 17.37.010 - 17.37.070 may be cited as the

AN INITIATIVE

Relating to the medical uses of marijuana for persons suffering from debilitating medical conditions.

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

Chapter 37. Medical Uses of Marijuana.

Sec. 17.37.010. Registry of Patients. (a) The department shall create and maintain a confidential registry of patients who have applied for and are entitled to receive a registry identification card according to the criteria set forth in this chapter. Authorized employees of state or local law enforcement agencies shall be granted access to the information contained within the department's confidential registry only for the purpose of verifying that an individual who has presented a registry identification card to a state or local law enforcement official is lawfully in possession of such card.

(b) No person shall be permitted to gain access to names of patients,

physicians, primary care-givers or any information related to such persons maintained in connection with the department's confidential registry, except for authorized employees of the department in the course of their official duties and authorized employees of state or local law enforcement agencies who have stopped or arrested a person who claims to be engaged in the medical use of marijuana and in the possession of a registry identification card or its functional equivalent pursuant to (e) of this section.

(c) In order to be placed on the state's confidential registry for the medical uses of marijuana, a patient shall provide to the department

(1) the original or a copy of written documentation stating that the patient has been diagnosed with a debilitating medical condition and the physician's conclusion that the patient might benefit from the medical use of marijuana;

(2) the name, address, date of birth, and social security number of the patient;

(3) the name, address, and telephone number of the patient's physician; and

(4) the name and address of the patient's primary care-giver, if one is designated at the time of application.

(d) The department shall verify all information submitted under (c) of this section within 30 days of receiving it. The department shall notify the applicant that his or her application for a registry identification card has been denied if its review of the information which the patient has provided discloses that the information required pursuant to (c) of this section has not been provided or has been falsified. Otherwise, not more than five days after verifying such information, the department shall issue a serially numbered registry identification card to the patient stating

(1) the patient's name, address, date of birth, and social security number;

(2) that the patient's name has been certified to the state health agency as a person who has a debilitating medical condition which the patient may address with the medical use of marijuana;

(3) the dates of issuance and expiration of the registry identification

(6) the patient and the primary care-giver collectively possess amounts of marijuana no greater than those specified in AS 17.37.020(a)(1) and (2); and

(7) the primary care-giver controls the acquisition of such marijuana and the dosage and frequency of its use by the patient.

Sec. 17.37.060. Addition of debilitating medical conditions. Not later than June 1, 1999, the department shall promulgate regulations under AS 44.62 (Administrative Procedure Act) governing the manner in which it may consider adding debilitating medical conditions to the list provided in this section. After June 1, 1999, the department shall also accept for consideration physician or patient initiated petitions to add debilitating medical conditions to the list provided in this section and, after hearing, shall approve or deny such petitions within 180 days of submission. The denial of such a petition shall be considered a final agency action subject to judicial review.

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

(1) "correctional facility" means a state prison institution operated and managed by employees of the Department of Corrections or provided to the Department of Corrections by agreement under AS 33.30.031 for the care, confinement or discipline of prisoners;

(2) "debilitating medical condition" means

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

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

(C) any other medical condition, or treatment for such

patient not to be either in lawful possession of a registry identification card or eligible for such card.

(b) Any patient found by a preponderance of the evidence to have willfully violated the provisions of this chapter shall be precluded from obtaining or using a registry identification card for the medical use of marijuana for a period of one year.

(c) No governmental, private, or any other health insurance provider shall be required to be liable for any claim for reimbursement for the medical use of marijuana.

(d) Nothing in this section shall require any accommodation of any medical use of marijuana

(1) in any place of employment;

(2) in any correctional facility;

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

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

(5) on a school bus.

Sec. 17.37.050. Medical use of marijuana by a minor. Notwithstanding AS 17.37.030(u), no patient who has not reached the age of majority under AS 25.20 or who has not had the disabilities of a minor removed under AS 09.55.590 shall engage in the medical use of marijuana unless

(1) his or her physician has diagnosed the patient as having a debilitating medical condition;

(2) the physician has explained the possible risks and benefits of medical use of marijuana to the patient and one of the patient's parents or legal guardians residing in Alaska, if any;

(3) the physician has provided the patient with the written documentation specified in AS 17.37.010(c)(1);

(4) the patient's parent or legal guardian referred to in (2) of this section, consents to the department in writing to serve as the patient's primary care-giver and to permit the patient to engage in the medical use of marijuana;

(5) the patient completes and submits an application for a registry identification card and the written consent referred to in (4) of this section to the department and receives a registry identification card;

card; and

(4) the name and address of the patient's primary care-giver, if any is designated at the time of application.

(e) If the department fails to issue a registry identification card within 35 days of receipt of an application, the patient's application for such card will be deemed to have been approved. Receipt of an application shall be deemed to have occurred upon delivery to the department or deposit in the United States mails. Notwithstanding the foregoing, no application shall be deemed received prior to June 1, 1999. A patient who is questioned by any state or local law enforcement official about his or her medical use of marijuana shall provide a copy of the written documentation submitted to the department and proof of the date of mailing or other transmission of the written documentation for delivery to the department, which shall be accorded the same legal effect as a registry identification card, until the patient receives actual notice that the application has been denied. No person shall apply for n registry identification card more than once every six months.

(f) The denial of a registry identification card shall be considered a final agency action subject to judicial review. Only the patient whose application has been denied shall have standing to contest the final agency action.

(g) When there has been a change in the name, address, physician, or primary care-giver of a patient who has qualified for a registry identification card, that patient must notify the state health agency of any such change within 10 days. To maintain an effective registry identification card, a patient must annually resubmit updated written documentation to the state health agency, as well as the name and address of the patient's primary care-giver, if any.

(h) A patient who no longer has a debilitating medical condition shall return his or her registry identification card to the department within 24 hours of receiving such diagnosis by his or her physician.

(i) The department may determine and levy reasonable fees to pay for any administrative costs associated with their role in this program.

Sec. 17.37.020. Medical Use of Marijuana. (a) A patient may not engage in the medical use of marijuana with more marijuana than is medically justified to

address a debilitating medical condition. A patient's medical use of marijuana within the following limits is lawful:

(1) no more than one ounce of marijuana in usable form; and

(2) no more than six marijuana plants, with no more than three mature and flowering plants producing usable marijuana at any one time.

(b) For quantities of marijuana in excess of the amounts in (a) of this section, a patient or his or her primary care-giver must prove by a preponderance of the evidence that any greater amount was medically justified to address the patient's debilitating medical condition.

Sec. 17.37.030. Privileged medical use of marijuana. (a) Except as otherwise provided in AS 17.37.040, no patient or primary care-giver may be found guilty of, or penalized in any manner for, a violation of any provision of law related to the medical use of marijuana, where it is proved by a preponderance of the evidence that

(1) the patient was diagnosed by a physician as having a debilitating medical condition;

(2) the patient was advised by his or her physician, in the context of a bona fide physician-patient relationship, that the patient might benefit from the medical use of marijuana in connection with a debilitating medical condition; and

(3) the patient and his or her primary care-giver were collectively in possession of amounts of marijuana only as permitted under this section.

(b) Except as otherwise provided in AS 17.37.040, no patient or primary care-giver in lawful possession of a registry identification card shall be subject to arrest, prosecution, or penalty in any manner for medical use of marijuana or for applying to have his or her name placed on the confidential register maintained by the department.

(c) No physician shall be subject to any penalty, including arrest, prosecution, disciplinary proceeding, or be denied any right or privilege, for

(1) advising a patient whom the physician has diagnosed as having a debilitating medical condition, about the risks and benefits of medical use of marijuana or that he or she might benefit from the medical use of marijuana, provided that such advice is based upon the physician's contemporaneous assessment of the patient's

medical history and current medical condition and a bona fide physician-patient relationship; or

(2) providing a patient with written documentation, based upon the physician's contemporaneous assessment of the patient's medical history and current medical condition and a bona fide physician-patient relationship, stating that the patient has a debilitating medical condition and might benefit from the medical use of marijuana.

(d) Notwithstanding the foregoing provisions, no person, including a patient or primary care-giver, shall be entitled to the protection of this section for his or her acquisition, possession, cultivation, use, sale, distribution, and/or transportation of marijuana for non-medical use.

(e) Any property interest that is possessed, owned, or used in connection with the medical use of marijuana, or acts incidental to such use, shall not be harmed, neglected, injured, or destroyed while in the possession of state or local law enforcement officials where such property has been seized in connection with the claimed medical use of marijuana. Any such property interest shall not be forfeited under any provision of state or local law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense or entry of a plea of guilty to such offense. Marijuana and paraphernalia seized by state or local law enforcement officials from a patient or primary care-giver in connection with the claimed medical use of marijuana shall be returned immediately upon the determination that the patient or primary care-giver is entitled to the protection contained in this section as may be evidenced, for example, by a decision not to prosecute, the dismissal of charges, or acquittal.

Sec. 17.37.040. Restrictions on medical use of marijuana. (a) No patient in lawful possession of a registry identification card shall

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

(2) engage in the medical use of marijuana in plain view of, or in a place open to, the general public; or

(3) sell or distribute marijuana to any person who is known to the

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MEMORANDUM May 10, 1999

SUBJECT: Medical Marijuana - CSSSSB 94(HES)

TO: Senator Loren Leman
Attn: Mike Pauley

FROM: Gerald P. Luckhaupt
Legislative Counsel

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Question 6: What was the Marijuana Therapeutic Research Program?

Answer: The Marijuana Therapeutic Research Program (AS 17.35) was established by the legislature in 1982. When creating the program the legislature made these findings:

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

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

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

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

> [t]he following persons may take an oath, affirmation, or acknowledgment:
> (1) a justice, judge, or magistrate of a court of the State of Alaska or of the United States;
> (2) a clerk or deputy clerk of a court of the State of Alaska or of the United States;
> (3) a notary public;
> (4) a United States postmaster;
> (5) a commissioned officer under AS 09.63.050(4); or
> (6) a municipal clerk carrying out the clerk's duties under AS 29.20.380.

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

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

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

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

[6/]"Sworn statement" means

"(A)a statement knowingly given under oath or affirmation attesting to the truth of what is stated, including a notarized statement; or

(B) a statement knowingly given under penalty of perjury under AS 09.63.020." AS 11.56.240(2).

Chapter 35. Marijuana Therapeutic Research Program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 17.35.500. Definitions. In this chapter

(1) "board" means the Board of Pharmacy;

(2) "marijuana" has the meaning set out in AS 11.71.900(14);

(3) "practitioner" means a physician authorized to practice medicine in the state under AS 08.64. (§ 5 ch 45 SLA 1982)

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

Sectional Analysis – Committee Substitute for HB 213

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

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

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

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

Section 1

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

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

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

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

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

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

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

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

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

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

1) Person must be a patient, primary caregiver for a patient, or alternative caregiver for a patient.

2) The patient must be currently registered with the Department of Health & Social Services as a person entitled to use marijuana to address a debilitating medical condition.

3) The entire amount of marijuana in question must have been intended for medical use by the patient in accordance with a physician's recommendation as described in AS 17.37.010(c) *(see page 3, lines 28-31 and page 4, lines 1-9).*

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

5) If the defendant is a primary caregiver or alternative caregiver for a patient, the person must be in physical possession of the caregiver registry identification card issued by DHSS.

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

Section 2

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

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

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

Section 3

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

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

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

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

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

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

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

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

C) The federal government classifies marijuana as a "Schedule I" drug: dangerous, addictive, and without medical benefit. Under federal law, it cannot be legally prescribed, grown, or sold – regardless of what Alaska statutes say. A doctor who recommends use of marijuana is effectively advising the patient to engage in activity that is prohibited by law. Out of concern for the welfare of the patient, it is reasonable to require that other legal treatments be considered first. Nothing in state law can protect a patient (or a physician) from enforcement action by the federal Drug Enforcement Administration.

D) The main psychoactive ingredient in marijuana, Delta-9-tetrahydrocannabinol (THC), is already available in synthetic form in the drug Marinol, which can be legally prescribed. Unlike marijuana, it is "pure" and can be administered in precise, controlled doses. As the American Medical Association has stated, "Marijuana doesn't fit neatly into traditional protocols because the dosage is inexact, the quality and strength of marijuana varies, and each puff contains more than 400 chemicals, not just a single agent to be isolated." *(Source: editorial of* American Medical News, *April 7, 1997)*

E) The American Medical Association has recommended that marijuana remain classified as a prohibited, Schedule I drug (i.e., illegal to prescribe) until further research can demonstrate whether the substance has any medical utility: "What patients and physicians deserve now is some much-needed clinical research that will decide the issue of whether medical marijuana is even worth talking about... Certainly medical marijuana has a loyal following of patients. As the ballot measures indicate, it has also captured the imagination of the public at large. Unfortunately, unproven therapies often do." *(Source: Report 10 of the Council on Scientific Affairs, American Medical Association & editorial of* American Medical News, *April 7, 1997)*

F) The American Cancer Society has questioned the efficacy of medical marijuana: "Marijuana has also been suggested as a treatment for pain, loss of appetite and depression associated with cancer. To date, there is no scientific evidence that marijuana is as useful as currently available medications in controlling these symptoms. Claims that marijuana smoking can improve some patients' general sense of well-being cannot be readily verified by scientific research. Some states have recently passed legislation intended to promote access to marijuana for patients with cancer and other serious diseases. Evaluation of any medication involves weighing its benefits against adverse effects and other disadvantages. As a medication for controlling nausea and vomiting associated with cancer chemotherapy, smoked marijuana appears to offer little if any benefit over legally available medications (including dronabinol)." *(Source: statement posted on the American Cancer Society web page, available at www.cancer.org/murphy /week2.html)*

G) Marijuana is a dangerous substance and it is the most commonly abused illegal drug in the United States: "Today's street version [of marijuana], however, is 10 times more potent than what was available a decade or two ago. And it is that many times more dangerous. Marijuana... is far from harmless. It contains more harmful chemicals than cigarettes. The chemical ingredients can stay in the body for up to a month after the smoking of a single joint (marijuana cigarette). Marijuana affects every tissue in the body. It slows down brain activity and impairs concentration, depth perception, reaction time, and the ability to evaluate situations and outcomes. It can damage short-term memory and bring on a totally 'I don't care' attitude... Meanwhile, the smoke from one marijuana joint causes more lung damage than that from a whole pack of cigarettes. Over time the chemicals and smoke can cause lung cancer and emphysema. The body's ability to fight infection may be lowered because marijuana often lowers the white blood cell count." *(Source: "The Perils of Pot," by Dr. Richard Heyman, Chairman of the Committee on Substance Abuse of the American Academy of Pediatrics, published in the American Medical Association book "Teen Talk.")*

3) The registry must include not only the patient, but also the patient's primary caregiver and alternative caregiver, if either is designated. Only <u>one</u> primary caregiver and alternative caregiver can be listed for each patient. To be listed as a caregiver, a person must submit a sworn statement to DHSS stating that the applicant is at least 21 years of age, not currently on probation or parole, and has never been convicted of a felony violation of the drug laws of Alaska or another state. The patient must include the following information about the primary and alternative caregivers in his or her application: name, address, date of birth, Alaska drivers license or identification card number. A person can be a caregiver for only one patient at a time, except in circumstances in which the person is caring for two or more patients who reside in the same household as the caregiver <u>and</u> these patients are related to the caregiver by at least the fourth degree of kinship by blood or marriage.

4) If the patient is a minor, the registry application must be filed by the parent or guardian. The application <u>must</u> include a statement by the minor's parent or guardian that the physician has explained the risks and benefits of medical use of marijuana and that the parent or guardian consents to serve as the primary caregiver for the patient. CSHB 213 further requires that the parent or guardian *"control the acquisition, possession, dosage, and frequency of use of marijuana by the patient."*

5) CSHB 213 deletes much of the sweeping confidentiality language at AS 17.37.010(b) because it unreasonably restricts the ability of law enforcement to access registry information for official purposes *(see page 3, lines 13-24)*. In its place, CSHB 213 stipulates that registry information is confidential and <u>not</u> considered a public record under AS 09.25.100 – 09.25.220 (the public records statute under the Code of Civil Procedure). However, law enforcement personnel are permitted to access registry information while "in the course of a criminal investigation." This specific type of access is not currently permitted under MMA.

6) DHSS is permitted to deny a registration card to a patient who "is not... qualified to be registered" *(see page 5, lines 15-16).* This authority is somewhat broader than what is currently permitted under the Medical Marijuana Act, which authorizes a denial only if the patient (1) did not provide the required information; or (2) provided information that was falsified.

7) If a patient's application designates a caregiver and DHSS determines that the caregiver does not meet the statutory requirements to be listed, the department shall proceed to review the patient's application as if there were no designation of a caregiver. The patient may apply to have a new primary caregiver or alternate caregiver listed at any time.

8) When an application is approved, the department will issue a registration card for the patient and a duplicate card for the patient's primary caregiver, if one has been listed. The duplicate card will be clearly identified as the caregiver registry identification card.

9) The Medical Marijuana Act states that if DHSS fails to act on an application within 35 days of receipt, then the application is considered to have been automatically approved. CSHB 213 retains this provision, but adds a stipulation that if the department subsequently registers or denies registration to a patient or caregiver, this action revokes or supersedes the previous "automatic" approval.

10) A patient or primary caregiver who is questioned by a law enforcement officer regarding the medical use of marijuana must present proper identification to the official, and also one of the following documents: (1) the person's registry identification card; or (2) a copy of an application that has been pending before the department for more than 35 days without being approved or denied, along with proof of the date of delivery to the department.

11) The MMA states that a denial of a registry identification card is considered a final agency action subject to judicial review, and that only the patient has the standing to contest the denial. CSHB 213 amends this language to state that, in addition to a denial, the <u>revocation</u> of a registry identification card or the <u>removal of a person from the registry</u> (e.g., a primary caregiver) also constitutes a final action subject to judicial review. In addition to the patient, a <u>parent or guardian of a patient who is a minor</u> also has standing to contest the agency action.

12) The MMA requires a patient to notify the department within 10 days of any changes in the <u>patient's</u> name, address, physician, or primary caregiver. CSHB 213 expands this 10-day notice requirement to include any changes in <u>name</u> or <u>address</u> of the <u>primary caregiver</u>.

13) The MMA requires the patient to return his or her registry identification card within 24 hours of receiving a physician's diagnosis that the patient no longer has a debilitating condition. CSHB 213 expands this requirement to also require the <u>primary caregiver</u> to return his or her registration card within 24 hours of the new diagnosis.

14) CSHB 213 adds a new provision in subsection (m) designed to prevent abuse of the registration system: "A copy of a registry identification card is not valid. A registry identification card is not valid if the card has been altered, mutilated in a way that impairs its legibility, or laminated." *(see page 7, lines 25-27)*

15) CSHB 213 adds a new subsection (n) permitting DHSS to revoke a patient's registration if the department determines that the patient has violated a provision of AS 17.37 (the Medical Marijuana Act) or AS 11.71 (Controlled Substances Act). *(see page 7, lines 28-29)*

16) CSHB 213 also adds a new subsection (o) allowing DHSS to remove a primary or alternate caregiver from the state registry if it is determined that the caregiver is not qualified to be listed or has violated a provision of AS 17.37 (Medical Marijuana Act) or AS 11.71 (Controlled Substances Act). *(see page 7, lines 30-31 & page 8, lines 1-2)*

Section 4

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

1) In subsection (a), all material from the original MMA is deleted and replaced with new language *(see page 8, lines 12-30).* The language proposed for deletion is the most problematic in the Medical Marijuana Act, as it grants sweeping immunity to both patients and primary caregivers claiming a medical need for marijuana, even if the patient and primary caregiver are not registered with DHSS. Along with the MMA's removal of "medical marijuana" from Alaska's list of controlled substances *(see page 2, lines 23-24)*, this provision effectively places the burden on law enforcement to prove that a person being questioned about marijuana use is NOT using it for a medical purpose. This shifting of the burden of proof will likely cause police to not bother making arrests in many situations because of the ambiguities in the law. This problematic language is replaced by the new "affirmative defense" provision described in Section 1 of this analysis. The new subsection (a) reads as follows: *"A patient, primary caregiver, or alternate caregiver registered with the department under this chapter has an affirmative defense to a criminal prosecution related to marijuana to the extent provided in AS 11.71.090."*

2) The next subsection (b) begins on page 8, line 31. In its original form, as part of the MMA, this subsection grants sweeping immunity from prosecution related to the medical use of marijuana, though at least this subsection limits the protection to those who are in "lawful possession of a registry identification card." Similar to the change in subsection (a), CSHB 213 deletes the general immunity language in this subsection because protection for medical marijuana use is covered by the affirmative defense provision in Section 1. However, the revised subsection retains the immunity language insofar as it relates to the specific act of applying to be listed on the state registry: *"Except as otherwise provided by law, a person is not subject to arrest, prosecution, or penalty in any manner for applying to have the person's name placed on the confidential registry maintained by the department under AS 17.37.010."*

3) The next subsection (c) in the Medical Marijuana Act (beginning on page 9, line 6) provides that a physician who advises a patient regarding the medical use of marijuana shall not be subject to prosecution or other disciplinary action for providing such advice, provided certain conditions are met. CSHB 213 adds a new condition to those already listed – specifically, that the physician's advice must be based on a contemporaneous assessment of *"other approved medications and treatments that might provide relief and that are reasonably available to the patient and that can be tolerated by the patient."*

4) The next subsection (d) of MMA (beginning on page 9, line 28) contains an exclusionary clause stating that a person is not "entitled to the protection of this section" (i.e., AS 17.37.030) for the non-medical use of marijuana. CSHB 213 expands the scope of this exclusionary clause to state that no person is "entitled to the protection of this chapter" (i.e., AS 17.37 in its entirety) for the non-medical use of marijuana. In other words, a person's use of marijuana for non-medical purposes makes that person ineligible for the protections in the entire Medical Marijuana Act, not merely the protections of one section.

5) CSHB 213 deletes the next subsection (e) of the MMA *(see page 10, lines 2-19).* This subsection contains cumbersome language addressing issues of forfeiture of property arising from seizures of medical marijuana. The deletion of this language was the result of an amendment adopted in the HESS Committee at the recommendation of the Department of Law and Department of Public Safety. Alaska law already includes comprehensive guidelines for seizures and forfeiture of property in the area of controlled substances. These procedures are set out in AS 17.30.100 – 17.37.126, and they apply to all cases involving seizure of drugs on Alaska's list of controlled substances. There is no need to have a separate seizure and forfeiture law that applies exclusively to marijuana used for medical purposes. In addition, the provisions of CSHB 213 requiring registration and the carrying of a registry ID card make it extremely unlikely there will be any cases in which law enforcement officials mistakenly seize marijuana and other paraphernalia from a patient who is legally entitled to possess or use it.

Section 5

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

1) The existing Medical Marijuana Act, now in force, provides in subsection (a) that a patient "in lawful possession of a registry identification card" shall not:

   A) use medical marijuana "in a way that endangers the health or well-being of any person."

   B) use medical marijuana "in plain view of, or in a place open to, the general public."

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

Curiously, the limitations above do not apply to:

A) a primary caregiver; or

B) a patient who is not in "lawful possession of a registry identification card."

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

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

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

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

Section 6

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

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

Section 7

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

1) CSHB 213 adds a new definition of **"alternate caregiver,"** as the original MMA does not provide for alternate caregivers. The alternate caregiver, when in possession of the caregiver ID card, is able to carry out the responsibilities of the primary caregiver when that person is unable to fulfill them (such as during travel out of state).

2) CSHB 213 adds a definition of the term **"bona fide physician-patient relationship."** Although this term is used in the MMA at AS 17.37.030(c)(2), the drafters of the initiative neglected to include a definition. CSHB 213 defines the term as a relationship in which *"the physician obtained a patient history, performed an in-person physical examination of the patient, and documented written findings, diagnoses, recommendations, and prescriptions in written patient medical records maintained by the physician."*

3) The definition of **"correctional facility"** in MMA is deleted in favor of a more comprehensive definition already in Alaska law under Title 33, Chapter 30, entitled "Prison Facilities and Prisoners" (see Section 901): *"a prison, jail, camp, farm, half-way house, group home, or other placement designated by the commissioner for the custody, care, and discipline of prisoners."*

4) CSHB 213 includes a new definition of **"facility monitored by the department or the Department of Administration."** This definition is necessary because CSHB 213 states at AS 17.37.040(d)(2) that the medical use of marijuana is not required to be accommodated at any of these facilities *(see page 11, lines 28-29).* The definition includes any "institution, building, office, or home" operated, funded, inspected, licensed, designated, or under contract with DHSS or the Department of Administration for the care of juveniles, the elderly, and the mentally ill *(see page 13, lines 14-31).*

5) A new definition of **"medical facility"** is included. for the same reason identified in (4) above – namely, that CSHB 213 requires no accommodation for the use of medical marijuana in these facilities *(page 11, line 28).* Medical facility is defined as an *"institution, building, office, or home providing medical services, and includes a*

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

6) **"Medical use"** of marijuana is redefined for greater clarity. The existing definition in the Medical Marijuana Act defines "medical use" as marijuana used, manufactured, etc., to "address the symptoms or effects of a debilitating medical condition." CSHB 213 defines medical use in more concise terms, as marijuana used to *"alleviate a debilitating medical condition."*

7) CSHB 213 changes the definition of **"primary caregiver"** to add greater clarity and prevent abuse: *"primary caregiver means a person listed as a primary caregiver under AS 17.37.010 and in physical possession of a caregiver registry identification card; 'primary caregiver' also includes an alternate caregiver when the alternate caregiver is in physical possession of the caregiver registry identification card."*

8) The definition of **"prisoner"** contained in MMA is deleted by CSHB 213. The need for this definition is not apparent, since the term is not employed anywhere in the main body of the initiative language. The only reference to the word "prisoner" is found in the definitions section, under "correctional facility." Since CSHB 213 proposes to use the standard definition of "correctional facility" contained in state statute at AS 33.30.901(4), there appears to be no need for a unique, tailor-made definition of prisoner. State law already defines the term "prisoner" at AS 33.30.901(12).

9) CSHB 213 deletes the definition of **"registry identification card"** because it is superfluous. The meaning of this term is self-evident in CSHB 213 at Sec. 3, AS 17.37.010(e) *(see page 5, lines 26-31 & page 6, lines 1-12).*

10) CSHB 213 deletes the definition of **"written documentation"** as the meaning of this term is self-evident in Sections 1 & 3 *(see page 3, lines 28-31; page 4, lines 1-9).*

Section 8

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

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

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

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

Section 9

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

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

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 213

Revision Date:
Title: An Act relating to the medical use of marijuana; and

Sponsor: House (Hes)
Requestor: House (HES)

Dept. Affected: Health and Social Services
BRU: State Health Services
Component: Bureau of Vital Statistics
COMPONENT SERIAL NO. 961
See also (SN#):

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY00	FY01	FY02	FY03	FY04	FY05
PERSONAL SERVICES	37.7	38.0	39.0	40.0	41.0	42.0
TRAVEL						
CONTRACTUAL	40.0	40.9	41.8	37.3	38.1	38.9
SUPPLIES	3.0	1.5	3.0	1.5	3.0	1.5
EQUIPMENT	7.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	87.7	80.4	83.8	78.8	82.1	82.4
CAPITAL EXPENDITURES						
CHANGES IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

POSITIONS:

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

Estimate of any current year (FY99) cost:

ANALYSIS: (Attach a separate page if necessary)

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

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

4/28/99

Prepared by: Peter M. Nakamura, MD, MPH
Division: Public Health
Phone: (907) 465-3090
Date: 04/28/99

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services
Date: 4/29/99

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Sec. 11.61.215. Intoxication as applicable to possession of a firearm. [Repealed, § 11 ch 59 SLA 1991.]

Sec. 11.61.220. Misconduct involving weapons in the fifth degree. (a) A person commits the crime of misconduct involving weapons in the fifth degree if the person

(1) knowingly possesses a deadly weapon, other than an ordinary pocket knife or a defensive weapon, that is concealed on the person;

(2) knowingly possesses a loaded firearm on the person in any place where intoxicating liquor is sold for consumption on the premises;

(3) being an unemancipated minor under 16 years of age, possesses a firearm without the consent of a parent or guardian of the minor;

(4) knowingly possesses a firearm

(A) within the grounds of or on a parking lot immediately adjacent to a center, other than a private residence, licensed under AS 47.33 or AS 47.35 or recognized by the federal government for the care of children; or

(B) within a

(i) courtroom or office of the Alaska Court System; or

(ii) courthouse that is occupied only by the Alaska Court System and other justice-related agencies;

(C) within a domestic violence or sexual assault shelter that receives funding from the state; or

(5) possesses or transports a switchblade or a gravity knife.

(b) In a prosecution under (a)(1) of this section, it is an affirmative defense that the defendant, at the time of possession, was

(1) in the defendant's dwelling or on land owned or leased by the defendant appurtenant to the dwelling;

(2) actually engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection;

(3) the holder of a valid permit to carry a concealed handgun under AS 18.65.700 — 18.65.790, the weapon was a concealed handgun as defined in AS 18.65.790, and the possession did not occur in a municipality or established village in which the possession of concealed handguns is prohibited under AS 18.65.780 — 18.65.785; or

(4) considered a permittee under AS 18.65.748 and

(A) the weapon was a concealed handgun as defined in AS 18.65.790; and

(B) the possession did not occur in a municipality or established village in which the possession of concealed handguns is prohibited under AS 18.65.780 — 18.65.785.

(c) The provisions of (a)(2) and (4) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(d) In a prosecution under (a)(2) of this section, it is

(1) an affirmative defense that

(A) the defendant, at the time of possession, was the holder of a valid permit to carry a concealed handgun under AS 18.65.700 — 18.65.790 or was considered a permittee under AS 18.65.748;

(B) the loaded firearm was a concealed handgun as defined in AS 18.65.790;

(C) the possession occurred at a place designated as a restaurant for the purposes of AS 04.16.049 and the defendant did not consume intoxicating liquor at the place; and

(D) the possession did not occur in a municipality or established village in which the possession of concealed handguns is prohibited under AS 18.65.780 — 18.65.785;

(2) a defense that the defendant, at the time of possession, was on business premises

(A) owned by or leased by the defendant; or

(B) in the course of the defendant's employment for the owner or lessee of those premises.

(e) For purposes of this section, a deadly weapon on a person is concealed if it is covered or enclosed in any manner so that an observer cannot determine that it is a

weapon without removing it from that which covers or encloses it or without opening, lifting, or removing that which covers or encloses it; a deadly weapon on a person is not concealed if it is an unloaded firearm encased in a closed container designed for transporting firearms.

(f) For purposes of (a)(2) and (e) of this section, a firearm is loaded if the

(1) firing chamber, magazine, clip, or cylinder of the firearm contains a cartridge; and

(2) chamber, magazine, clip, or cylinder is installed in or on the firearm.

(g) Misconduct involving weapons in the fifth degree is a class B misdemeanor.

(h) The provisions of (a)(1) of this section do not apply to a

(1) peace officer of this state or a municipality of this state acting within the scope and authority of the officer's employment;

(2) peace officer employed by another state or a political subdivision of another state who, at the time of the possession, is

(A) certified as a peace officer by the other state; and

(B) acting within the scope and authority of the officer's employment; or

(3) police officer of this state or a police officer or chief administrative officer of a municipality of this state; in this paragraph, "police officer" and "chief administrative officer" have the meanings given in AS 18.65.290.

(i) In a prosecution

(1) under (a)(4)(B) of this section, it is a defense that the defendant, at the time of possession, was authorized to possess the firearm under a rule of court;

(2) under (a)(4)(C) of this section, it is a defense that the defendant, at the time of possession, was authorized in writing by the administrator of the shelter to possess the firearm. (§ 7 ch 166 SLA 1978; am § 23 ch 102 SLA 1980; am §§ 8, 9 ch 59 SLA 1991; am §§ 17, 18 ch 79 SLA 1992; am §§ 1 — 3 ch 67 SLA 1994; am § 2 ch 124 SLA 1994; am § 3 ch 130 SLA 1994; am § 3 ch 33 SLA 1995; am §§ 4 — 8 ch 1 SLA 1998; am § 1 ch 10 SLA 1998)

Revisor's notes. — Paragraphs (i)(1) and (i)(2) were enacted as (i)(A) and (i)(B). Renumbered in 1998.

Effect of amendments. — The 1991 amendment, effective September 15, 1991, in subsection (a), inserted "or a defensive weapon" in paragraph (1), added paragraphs (4) and (5), and made stylistic changes; and in subsection (c), inserted, "and (4)."

The 1992 amendment, effective September 14, 1992, substituted "fifth degree" for "third degree" near the beginning of subsection (a) and in subsection (g); and, in paragraph (a)(4), inserted "or a defensive weapon" in two places.

The first 1994 amendment, effective October 1, 1994, added paragraph (b)(3) and made related stylistic changes; added "; a deadly weapon on a person is not concealed if it is an unloaded firearm encased in a closed container designed for transporting firearms" at the end of subsection (e); and, in subsection (f), inserted an internal reference in the introductory language, added the paragraph (1) designation, added paragraph (2), and made a related stylistic change.

The second 1994 amendment, effective January 1, 1996, substituted "AS 47.35" for "AS 47.35.010 — 47.35.075" in paragraph (a)(4).

The third 1994 amendment, effective January 1, 1995, substituted "AS 47.33 or AS 47.35.010 — 47.35.070" for "AS 47.35.010 — 47.35.075" in paragraph (a)(4).

The 1995 amendment, effective August 17, 1995, in paragraph (a)(4), deleted former subparagraph (A), relating to possession of defensive weapons within the grounds of or on a parking lot immediately adjacent to a school, and deleted the former subparagraph (B) designation.

The first 1998 amendment, effective April 14, 1998, in paragraph (a)(4) added the subparagraph (A) designation and added subparagraphs (B) and (C); in subsection (b) substituted "the weapon was a concealed handgun" for "the deadly weapon concealed was a handgun," in paragraph (3); added paragraph (4), and made a related stylistic change; in subsection (c) made a subsection reference substitution; in subsection (d) added paragraph (1), designated the existing provisions of that subsection as paragraph (2), and rewrote the material appearing therein; and added subsections (h) and (i).

The second 1998 amendment, effective April 14, 1998, rewrote subsection (h).

Editor's notes. — Until January 1, 1996, subparagraph (a)(4) reads as follows: "licensed under AS 47.35.010 — 47.35.075 or recognized by the federal government for the care of the children."

Legislative history reports. — For revision of 1978 legislative committee report on AS 11.61.220, see 1979 House Journal, pp. 632-633. For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.

Opinions of attorney general. — Because AS 11.55.020 (now this section) excepts only "peace officers" from the general prohibition against carrying concealed weapons, other persons, including state employees charged with limited law enforcement duties unless a peace officer within the meaning of AS 01.10.060(6), may not carry concealed weapons. December 22, 1977, Op. Att'y Gen.

A comparison of the language of AS 18.65.010(b),

Talking Points

Amendment G.1 for CSHB 213 (HES) (draft 1-LS0892\G)

Substance: Page 4, lines 3-4: Deletes requirement that physician's statement accompanying patient's application for the DHSS registry must specify "the nature of the patient's symptoms."

Discussion: The requirement of symptom disclosure was intended by the sponsor to assist DHSS in detecting a clearly fraudulent application, e.g., Patient X stubs his toe and obtains a recommendation for marijuana from Dr. Feelgood. However, DHSS has testified they have other means of detecting when physicians are recommending marijuana inappropriately. DHSS is also concerned about confidentiality – disclosure of patient's symptoms would effectively mean the department has custody over sensitive & private patient medical records, and would have to go to extraordinary lengths to protect confidentiality. The group sponsoring the marijuana initiative, Alaskans for Medical Rights, has also expressed opposition to this disclosure requirement.

Amendment G.2 for CSHB 213 (HES) (draft 1-LS0892\G)

Substance: Page 8, line 10: Adds a new subsection that requires physician to certify that a patient applying for medical marijuana registry was personally examined by the physician within the one-year period preceding the date of the patient's application. This would also apply to the annual renewal – patient would have to provide documentation stating that physician's exam occurred during the one-year period preceding the renewal application.

Discussion: The original HB 213 included a provision stating that a patient applying for the DHSS registry must have been examined by a physician within three months of the date of application. The HESS Committee deleted this requirement in response to concerns expressed by the Administration. The concern was that the 3-month requirement could pose a hardship for people in rural areas with limited access to health care services However, the effect of deleting this provision is that a person could theoretically have one physical examination and then smoke marijuana for 10 or 20 years without every having to obtain an updated examination. The proposed amendment would restore the requirement of periodic physical examinations – but the "window" is expanded from 3 months to 1 year, so that the requirement does not pose an undue burden for persons who live in rural areas of the state.

Amendment G.3 for CSHB 213 (HES) (draft 1-LS0892\G)

Substance: Page 5, lines 6-7: Delete requirement that a primary caregiver can care for multiple patients who are relatives ONLY if they reside in the same household as the caregiver.

Discussion: HB 213 establishes a "one-to-one" relationship between patients using medical marijuana and their primary caregivers: that is, each patient can have only one primary caregiver, and each caregiver can have only one patient. The intent of this is to avoid a situation where "drug dealers" fulfill the role of primary caregiver by "supplying" marijuana to multiple patients.

There is an exception to the "one-to-one" relationship in HB 213. It allows a primary caregiver to care for multiple patients if the patients are related to the caregiver and reside in the same household

as the caregiver. Concerns have been raised that many family members might not live in the same household as a relative who wishes to serve as the caregiver. Deleting the "same household" requirement will allow more flexibility in this area.

Amendment G.4 for CSHB 213 (HES) (draft 1-LS0892\G)

Substance: Page 1, line 14 & page 2, lines 1-3: Delete requirement that patient or primary caregiver must prove that all marijuana possessed, transferred, etc. was being used only for a medical purpose.

Discussion: This language has been criticized on the grounds that it allegedly requires the patient to prove a negative, i.e., that he or she was not using marijuana for an illegal purpose. While the sponsor does not agree that the burden of proof would be interpreted in this manner, the language is not essential. In the subsequent paragraph (3) it is stated that an affirmative defense is only valid if the patient or primary caregiver is in compliance with the requirements of AS 17.37 (the Medical Marijuana Act). As amended by HB 213, AS 17.37 would prohibit the use of marijuana for any non-medical purpose, so the language proposed for deletion is largely superfluous.

Amendment G.5 for CSHB 213 (HES) (draft 1-LS0892\G)

Substance: Page 11, line 10: Insert "in the aggregate" to make it clear that the patient and primary caregiver can collectively possess no more than one ounce and six plants.

Discussion: The original version of HB 213 made it clear that the possession limits in the marijuana initiative approved by voters (one ounce usable form & six plants) applied collectivelv to the patient and primary caregiver. In other words, the two persons could possess, in the aggregate, no more than one ounce usable and six plants. When the CS for HB 213 was drafted, the concept of "aggregate possession" limits was inadvertently left out. As the bill reads now, the patient and primary could arguably possess one ounce and six plants EACH, for a total of two ounces and twelve plants. The proposed amendment would restore the possession limits to an aggregate of one ounce, six plants.

Amendment G.6 for CSHB 213 (HES) (draft 1-LS0892\G)

Substance: Page 3, line 6: State that law enforcement can have access to the DHSS registry in a criminal investigation only if it pertains to a violation of the medical marijuana act or controlled substance laws of the state.

Discussion: Concerns have been raised in previous hearings that HB 213 allows law enforcement to have access to the DHSS patient registry at any time and for any reason. This proposed amendment clarifies the sponsor's intent, that law enforcement would have access to the registry information only for an investigation of a violation of state drug laws, in which case the information in the registry would have some relevance.

1-LS0892\G.1
Luckhaupt
5/11/99

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE DYSON

TO: CSHB 213(HES)

Page 2, lines 2 - 3:

Delete "symptoms disclosed in the physician's statement described in AS 17.37.010(c)"

Insert "debilitating medical condition diagnosed by the patient's physician"

Page 4, lines 3 - 4:

Delete "**and specifying the nature of the patient's symptoms**"

1-LS0892\G.2
Luckhaupt -
5/11/99

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE DYSON

TO: CSHB 213(HES)

Page 3, line 31, following "**relationship**":

Insert "**and setting out the date the examination occurred**"

Page 7, line 18, following "documentation":

Insert "**, including a statement signed by the patient's physician containing the information required to be submitted under (c)(1) of this section,**"

Page 8, following line 10:

Insert a new subsection to read:

"**(r) The department may not register a patient under this section unless the statement of the patient's physician discloses that the patient was personally examined by the physician within the one-year period immediately preceding the patient's application. The department shall cancel, suspend, revoke or not renew the registration of a patient whose annual resubmission of updated written documentation to the department under (k) of this section does not disclose that the patient was personally examined by the patient's physician within the one-year period immediately preceding the date by which the patient is required to annually resubmit written documentation.**"

1-LS0892\G.3
Luckhaupt
5/11/99

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE DYSON

TO: CSHB 213(HES)

Page 5, lines 6 - 7:

Delete "**reside in the same household as the caregiver and**"

1-LS0892\G.4
Luckhaupt
5/11/99

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE DYSON

TO: CSHB 213(HES)

Page 1, line 14, through page 2, line 3:

Delete all material.

Renumber the following paragraphs accordingly.

Page 2, lines 17 - 18:

Delete all material.

Renumber the following paragraphs accordingly.

Page 2, line 20:

Delete all material.

Renumber the following paragraph accordingly.

1-LS0892\G.5
Luckhaupt
5/11/99

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE DYSON

TO: CSHB 213(HES)

Page 11, line 10, following "**possess**":

Insert "**in the aggregate**"

1-LS0892\G.6
Luckhaupt
5/11/99

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE DYSON

TO: CSHB 213(HES)

Page 3, line 6, following "**investigation**":

Insert "**of an individual suspected of a violation of AS 11.71, AS 17.30, or this chapter**"

GREATER KETCHIKAN CHAMBER OF COMMERCE

Resolution on Medical Use of Marijuana

WHEREAS, the voters in 1990 declared marijuana to be a harmful, illegal substance with their vote to recriminalize possession, and

WHEREAS, the voters in the 1998 election approved Ballot Measure No. 8 to allow the compassionate use of "medical" marijuana for certain debilitating conditions, and

WHEREAS, Law Enforcement in Alaska have testified that it will be difficult to effectively enforce Alaska's drug laws because of the failure of the new law to include a mandatory registration for patients and caregivers, and

WHEREAS, under the initiative it will be difficult for law enforcement to distinguish between legitimate medical users and illegal recreational users of marijuana, and

WHEREAS, the new law under the initiative does not require that registration cards be required to be carried with the patient and caregiver which will also cause confusion in possible legal situations, and

WHEREAS, these gray areas in the law will present confusion of drug free messages for Alaska's young people, and

WHEREAS, the Alaska State Legislature has introduced legislation which would close the loopholes that could allow the new law to be abused by those who have no genuine medical need for marijuana, and

WHEREAS, this legislation makes the initiative work as intended by the voters, and

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

WHEREAS, the new law under the initiative may allow persons claiming a medical need to demand that their marijuana smoking be accommodated at the workplace, in schools, on school buses, and in prisons which is in total opposition to drug free school policies and present drug free workplaces.

NOW, THEREFORE, BE IT RESOLVED that the Greater Ketchikan Chamber of Commerce urges the Alaska Legislature to pass, during this session, the Committee Substitutes for SB94 and HB213 that will amend the medical marijuana law to address the concerns raised within this resolution which will assist law enforcement, will provide consistent drug free messages for our young people, will continue to uphold drug free school policies, and will continue to support drug free workplace environments.

Adopted by the Greater Ketchikan Chamber of Commerce
May 11, 1999

Sherrie Slick

Sherrie Slick, President

Staff

Alaskan Independence Party

P.O. Box 60231
Fairbanks, Alaska 99706

Alaska First — Alaska Always

March 18, 1999

Sen. Al Adams
State Capitol, room #417
Juneau Alaska 99801-1182

Dear Sen. Adams:

The Alaskan Independence Party would like to express its opposition to Senate Bill #94. We feel that this bill unnecessarily amends the existing law and is little short of an attempt by elements within the Legislature to back door the Alaskan voter.

The Alaskan Independence Party does not advocate or condone the use of marijuana or any other recreational drug. However, used medicinally, cannabis has been shown effective in relieving the discomfort of a wide range of discomforts. Medical marijuana, in the hands of a licensed practitioner, is in some cases an acceptable alternative drug. The Alaskan voters have expressed their opinion on the matter of the medical use of marijuana.

In this last election, by an overwhelming margin, the voters of the State of Alaska OK'd the use of marijuana for medicinal purposes. The medical marijuana law as it stands appears to be a well crafted well thought out law with distinct limitations and safeguards for patients, care-givers, and the average citizen of Alaska.

Senate Bill #94 removes many of the safeguards for both the patients and care-givers. It removes the safeguards that insure the privacy of both the patient and care-giver by allowing excessive access to their records by enlarging the pool of agencies and individuals that may arbitrarily gain access to patients' records.

Senate Bill #94 unnecessarily expands the criteria required for the registration of a patient or care-giver. It there by possibly limits access to medicinal marijuana by those most in need of the relief provided by cannabis.

Our major objection to Senate Bill #94 is that it contains unnecessary emendation to a law already ratified by the voters of the State of Alaska in an overwhelming manner. Despite our reservations concerning the use of drugs we must acknowledge that the people have spoken and accept and respect their decision.

sincerely,

Mark Chryson, Chairman
Alaskan Independence Party
(907) 376-8285

John Fields, Vice-Chairman
Alaskan Independence Party
(907) 496-1790 (pager)

the case, taken together, supported the jury's findings of knowing possession beyond a reasonable doubt, the conviction was proper. Lee v. State, 611 P.2d 1076 (Alaska 1973) (decided under former AS 17.10).

Sec. 11.71.330. Liability of public servants. No liability is imposed by this chapter upon a public servant acting within the scope and authority of the public servant's employment. (§ 2 ch 45 SLA 1982)

Sec. 11.71.340. Offenses defined by amounts. Whenever a provision of this chapter defining an offense requires a determination of an amount, it is not a defense to the lowest class of offense established by the evidence that the amount in question was equal to or larger than the amount which would make the offense a higher class of offense, and a person may be charged and convicted accordingly. (§ 2 ch 45 SLA 1982)

Sec. 11.71.350. Burden of proof. It is not necessary for the state to negate an exemption or exception provided for in this chapter in a complaint, information, indictment, or other pleading or at a trial, hearing, or other proceeding under this chapter or AS 17.30. The defendant has the burden of proving by a preponderance of the evidence any exemption or exception claimed by the defendant. (§ 2 ch 45 SLA 1982)

Sec. 11.71.360. Unprivileged communications. Information communicated to a physician or other licensed practitioner in an effort to unlawfully procure a controlled substance or to unlawfully procure the administration of a controlled substance is not a privileged communication. (§ 2 ch 45 SLA 1982)

Article 4. Definitions.

Section
900. Definitions

Sec. 11.71.900. Definitions. In this chapter, unless the context clearly requires otherwise,

(1) "administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means into the body of a patient or research subject by

(A) a practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or

(B) the patient or research subject at the direction and in the presence of a practitioner;

(2) "agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser, but does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman;

(3) "committee" means the Controlled Substances Advisory Committee established in AS 11.71.100;

(4) "controlled substance" means a drug, substance, or immediate precursor included in the schedules set out in AS 11.71.140 — 11.71.190;

(5) "counterfeit substance" means a controlled substance which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed the substance and which falsely purports or is represented to be the product of, or to have been distributed by, the other manufacturer, distributor, or dispenser;

(6) "deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance whether or not there is an agency relationship;

1-LS0892\G.1
Luckhaupt -
5/11/99

5/11

AMENDMENT #1 adopted

OFFERED IN THE HOUSE BY REPRESENTATIVE DYSON

TO: CSHB 213(HES)

Page 2, lines 2 - 3:

Delete "symptoms disclosed in the physician's statement described in AS 17.37.010(c)"

Insert "debilitating medical condition diagnosed by the patient's physician"

Page 4, lines 3 - 4:

Delete "**and specifying the nature of the patient's symptoms**"

1-LS0892\G.2
Luckhaupt
5/11/99

5/11

AMENDMENT #2

OFFERED IN THE HOUSE BY REPRESENTATIVE DYSON

TO: CSHB 213(HES)

adopted, as amended

Page 3, line 31, following "**relationship**":

Insert "**and setting out the date the examination occurred**"

Page 7, line 18, following "documentation":

Insert "**, including a statement signed by the patient's physician containing the information required to be submitted under (c)(1) of this section,**"

Page 8, following line 10:

Insert a new subsection to read:

"**(r) The department may not register a patient under this section unless the statement of the patient's physician discloses that the patient was personally examined by the physician within the one-year period immediately preceding the patient's application. The department shall cancel, suspend, revoke or not renew the registration of a patient whose annual resubmission of updated written documentation to the department under (k) of this section does not disclose that the patient was personally examined by the patient's physician within the one-year period immediately preceding the date by which the patient is required to annually resubmit written documentation.**"

1-LS0892\G.3
Luckhaupt
5/11/99

5/11

AMENDMENT #3

OFFERED IN THE HOUSE adopted BY REPRESENTATIVE DYSON

TO: CSHB 213(HES)

Page 5, lines 6 - 7:

Delete "**reside in the same household as the caregiver and**"

1-LS0892\G.4
Luckhaupt
5/11/99

AMENDMENT #4 5/11 adopted

OFFERED IN THE HOUSE BY REPRESENTATIVE DYSON

TO: CSHB 213(HES)

Page 1, line 14, through page 2, line 3:

Delete all material.

Renumber the following paragraphs accordingly.

Page 2, lines 17 - 18:

Delete all material.

Renumber the following paragraphs accordingly.

Page 2, line 20:

Delete all material.

Renumber the following paragraph accordingly.

1-LS0892\G.5
Luckhaupt
5/11/99

AMENDMENT #5

OFFERED IN THE HOUSE BY REPRESENTATIVE DYSON

TO: CSHB 213(HES)

5/12
adopted

Page 11, line 10, following "**possess**":

Insert "**in the aggregate**"

1-LS0892\G.6
Luckhaupt
5/11/99

AMENDMENT #6

OFFERED IN THE HOUSE BY REPRESENTATIVE DYSON

TO: CSHB 213(HES)

Page 3, line 6, following "**investigation**":

Insert "**of an individual suspected of a violation of AS 11.71, AS 17.30, or this chapter**"

5/12
adopted

M4

1-LS0892\G.13
Luckhaupt
5/11/99

AMENDMENT #8 REP. CROFT

OFFERED IN THE HOUSE

TO: CSHB 213(HES)

Page 5, line 8, following "**marriage**":

Insert "**. Notwithstanding this limitation, upon the written request of a patient, the department may list a person as the primary caregiver for more than one patient if**

(1) that listing would avoid unnecessary hardship to the patient; or

(2) the patient's care is being provided in a hospice program licensed under AS 18.18"

M6

1-LS0892\G.11
Luckhaupt
5/11/99

AMENDMENT #10

REP. CROFT

OFFERED IN THE HOUSE

TO: CSHB 213(HES)

5/12

failed

Page 11, line 7, following "**except that**":

Insert

"**(A)**"

Page 11, line 9, following ";":

Insert "**and**

(B) if the patient does not receive any compensation in any form in exchange for the marijuana, a patient may give marijuana to another patient who is registered under AS 17.37.010 and who is in physical possession of a registry identification card;"

1-LS0892\G.12
Luckhaupt
5/11/99

AMENDMENT #11 REP. CROFT

OFFERED IN THE HOUSE 5/12

TO: CSHB 213(HES)

Page 1, line 5:

Delete "**Affirmative defense**"

Insert "**Defense**"

fails

Page 1, line 9:

Delete "an affirmative"

Insert "a"

Page 8, line 14:

Delete "**an affirmative**"

Insert "**a**"

AMENDMENT
OFFERED IN THE HOUSE
TO: CSHB 213(HES)
BY: REP. CROFT

INSERT PAGE 12, LINE 1
AFTER "BUS."

5/12 # 12

address a debilitating medical condition. A patient's medical use of marijuana within the following limits is lawful:

(1) no more than one ounce of marijuana in usable form; and

(2) no more than six marijuana plants, with no more than three mature and flowering plants producing usable marijuana at any one time.

(e) (4) For quantities of marijuana in excess of the amounts in (a) of this section, a patient or his or her primary care-giver must prove by a preponderance of the evidence that any greater amount was medically justified to address the patient's debilitating medical condition.

Sec. 17.37.030. Privileged medical use of marijuana. (a) Except as otherwise provided in AS 17.37.040, no patient or primary care-giver may be found guilty of, or penalized in any manner for, a violation of any provision of law related to the medical use of marijuana, where it is proved by a preponderance of the evidence that

(1) the patient was diagnosed by a physician as having a debilitating medical condition;

(2) the patient was advised by his or her physician, in the context of a bona fide physician-patient relationship, that the patient might benefit from the medical use of marijuana in connection with a debilitating medical condition; and

(3) the patient and his or her primary care-giver were collectively in possession of amounts of marijuana only as permitted under this section.

(b) Except as otherwise provided in AS 17.37.040, no patient or primary care-giver in lawful possession of a registry identification card shall be subject to arrest, prosecution, or penalty in any manner for medical use of marijuana or for applying to have his or her name placed on the confidential register maintained by the department.

(c) No physician shall be subject to any penalty, including arrest, prosecution, disciplinary proceeding, or be denied any right or privilege, for

(1) advising a patient whom the physician has diagnosed as having a debilitating medical condition, about the risks and benefits of medical use of marijuana or that he or she might benefit from the medical use of marijuana, provided that such advice is based upon the physician's contemporaneous assessment of the patient's

HB 214

1-LS0562\I
Luckhaupt
4/30/99

CS FOR HOUSE BILL NO. 214(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE MULDER

A BILL

FOR AN ACT ENTITLED

"An Act relating to litigation involving correctional facilities; and amending Rules 59(f), 60(b), 62, and 65, Alaska Rules of Civil Procedure."

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

* **Section 1.** FINDINGS AND INTENT. (a) The legislature finds that

(1) state and municipal executive branch agencies that operate correctional facilities need the widest latitude, consistent with constitutional and legal requirements, to manage those facilities and carry out the several constitutional goals of corrections administration;

(2) the legislature has the exclusive right to appropriate under the Constitution of the State of Alaska, and consent decrees and court orders that require certain levels of funding or services conflict with the legislature's exclusive appropriation power;

(3) the legislature carefully scrutinizes the correctional system each year, and annual budget appropriations have been and will continue to be based on the legislature's assessment of how to appropriately meet the needs of Alaska prisoners and the public as a

whole; because state revenues vary greatly from year to year, the legislature needs the widest latitude to exercise its constitutional and statutory budget authority for the good of all Alaskans; and

(4) the Alaska Supreme Court has held that administration of the state corrections system is an executive concern involving many day-to-day decisions that necessitate that court interference be kept to a minimum; see McGinnis v. Stevens, 543 P.2d 1221, 1237 (Alaska 1975); the Alaska Supreme Court has also held that the exercise of executive branch discretion within constitutional bounds is not subject to the control or review of the courts; see Public Defender Agency v. Superior Court, 534 P.2d 947, 950 (Alaska 1975).

(b) Based on the findings set out in (a) of this section, the legislature intends in this Act to provide a statutory framework for setting limits on the extent to which future legislatures and future executive branch administrations are limited by court orders or consent decrees of indefinite duration that govern correctional facility operations in ways that are not constitutionally or statutorily required.

* **Sec. 2.** AS 09.19 is amended by adding a new section to read:

Sec. 09.19.200. Correctional facility litigation. (a) Except as provided in (b) and (e) of this section, a court may not order prospective relief in a civil action with respect to correctional facility conditions unless the court finds that (1) the plaintiff has proven a violation of a state or federal right, (2) the prospective relief is narrowly drawn and extends no further than is necessary to correct the violation of the right, (3) the prospective relief is the least intrusive means necessary to correct the violation of the right, and (4) the prisoner exhausted all administrative remedies available to the prisoner before filing the civil action. When a court finds multiple violations of a state or federal right, when multiple remedies are ordered by the prospective relief, or when prospective relief applies to multiple correctional facilities, the findings required by this subsection shall be made as to each violation, each remedy, and each facility, as appropriate. In a civil action with respect to correctional facility conditions that has been certified as a class action, prospective relief applicable to the class may only be ordered after the court makes the findings required by this subsection and finds that the violation of a state or federal right is applicable to the

entire class. In making the findings required under this subsection, the court shall give substantial weight to any adverse effect on public safety or the operation of a criminal justice system caused by the prospective relief.

(b) In a civil action with respect to correctional facility conditions, to the extent otherwise authorized by law, the court may enter a temporary restraining order or an order for preliminary injunctive relief only if the court finds that the relief is (1) narrowly drawn and extends no further than is necessary to correct the harm that requires preliminary relief, and (2) the least intrusive means necessary to correct that harm. In making the findings required under this subsection, the court shall give substantial weight to any adverse effect on public safety or the operation of a criminal justice system caused by the preliminary relief. Preliminary injunctive relief shall automatically expire 90 days after the entry of the order unless the court orders final relief in the civil action before the expiration of the 90-day period.

(c) Prospective relief ordered in a civil action with respect to correctional facility conditions, including prospective relief ordered under a consent decree, regardless of whether that civil action was filed or the relief ordered before or after the effective date of this Act, shall be terminated upon the motion of the defendant unless the court finds that there exists a current violation of a state or federal right and makes the findings required by (a) of this section as to each current violation and as to each remedy and facility, as appropriate. A civil action that has been certified as a class action shall be terminated upon the motion of the defendant unless the court makes the findings required by this subsection and finds that the current violation of a state or federal right is applicable to the entire class. Prospective relief must be modified upon the motion of a party whenever, and to the extent, the findings required by this section no longer apply to one or more provisions of the prospective relief then in effect. This subsection and the time limits provided in (d) of this section do not prevent a party from seeking modification or termination before the relief is otherwise terminable under this section to the extent that modification or termination would otherwise be legally permissible.

(d) A defendant may not file a motion to modify or terminate under (c) of this section until

(1) two years after the date the court ordered the prospective relief if the order occurred after the effective date of this Act;

(2) one year after the date the court entered an order denying modification or termination of prospective relief made under (1) or (3) of this subsection; or

(3) in the case of an order issued on or before the effective date of this Act, one year after the effective date of this Act.

(e) Notwithstanding (a) of this section, in a civil action with respect to correctional facility conditions, a court may order prospective relief as provided in a consent decree without complying with (a) of this section, provided the prospective relief does not continue for a period of more than two years. In addition, parties may enter into private settlement agreements that do not comply with the limitations of relief set out in (a) of this section if the terms of the agreements are not subject to court enforcement other than the reinstatement of the civil proceedings that the agreements settled.

(f) The court shall promptly rule on a motion to modify or terminate prospective relief in a civil action with respect to correctional facility conditions. A motion to modify or terminate prospective relief made under this section stays the order for prospective relief beginning on the 90th day after the motion is filed, and the stay ends on the date the court enters a final order ruling on the motion. An automatic stay under this subsection may be postponed by the court for not more than 30 days for good cause.

(g) In this section,

(1) "civil action with respect to correctional facility conditions" means a civil proceeding arising under state or federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in correctional facilities;

(2) "consent decree" means a court order that is based on the agreement of the parties; the term "consent decree" does not include a private settlement agreement;

(3) "prisoner"

(A) means a person held in a state correctional facility or under authority of state or municipal law in official detention as defined in AS 11.81.900(b);

(B) includes a minor committed to the custody of the commissioner when,

(i) under AS 47.12.030, 47.12.065, or 47.12.100, the minor has been charged, prosecuted, or convicted as an adult; or

(ii) under AS 47.12.160(e), the minor has been ordered transferred to the custody of the commissioner of corrections or a municipality;

(4) "private settlement agreement" means an agreement entered into among the parties that is not subject to judicial enforcement other than the reinstatement of the civil proceeding that the agreement settled;

(5) "prospective relief" means all relief other than compensatory monetary damages;

(6) "relief" means any legal or equitable remedy in any form that may be ordered by the court, and includes a consent decree but does not include a private settlement agreement;

(7) "state or federal right" means a right arising from the United States Constitution, the Constitution of the State of Alaska, or a federal or state statute.

*** Sec. 3.** Section 2 of this Act has the effect of amending Rules 59(f), 60(b), 62, and 65, Alaska Rules of Civil Procedure, by altering the remedies available and the procedure to be used in litigation involving correctional facilities.

*** Sec. 4.** This Act takes effect only if sec. 3 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

*** Sec. 5.** This Act applies to any civil action with respect to correctional facility conditions that is filed, or in which prospective relief is ordered, before, on, or after the effective date of this Act. In this section, "civil action with respect to correctional facility conditions" and "prospective relief" have the meanings given in AS 09.19.200, added by sec. 2 of this Act.

4/29

Proposed Amendment To HB 214 - No. 3

1. Page 2, line15: Insert "and (e)" after "(b)"

2. Page 4, line 3: Insert the following at the beginning of this subsection: "Notwithstanding (a) of this section, in a civil action with respect to prison conditions, a court may order prospective relief as provided in a consent decree without complying with (a) of this section. In addition,"

3. Page 4, line 3: change the P in "Parties" to a lower case p.

4/29

Proposed Amendment To HB 214 - No. 2

Page 4, line 18: replace the word "prison" with "correctional facilities"

adopted as part of conceptual amend.

4/29 adopted

Proposed Amendment To HB 214 - No. 1

1. Page 3, lines 20-22: Replace the sentence beginning with "Prospective relief ..." with the following: "Prospective relief must be modified upon the motion of a party whenever, and to the extent, the findings required by this section no longer apply to one or more provisions of the prospective relief then in effect."

2. Page 3, line 26: Insert the words "modify or" between "to" and "terminate."

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 214

Revision Date/Time (Note if correction) _____ Dept. Affected Department of Corrections

Title An Act relating to litigation involving correctional facilities; and amending rules 59(f), 60(b), 62, and 65, Alaska.. BRU Administration and Operations

Component All

Sponsor Representative Mulder

Requester House Judiciary Committee Component Serial No. #0694

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	****	****	****	****	****	****
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	****	****	****	****	****	****

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

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

The Dept. of Corrections is submitting an indeterminate fiscal note for this legislation because the Department is unable to ascertain its economic impact. Under the terms of this bill, the Department will be able to seek closure of the Cleary class action lawsuit one year following the effective date of the legislation. It is unknown, however, whether the court will act favorably on the Department's motion. Furthermore, even if it is assumed that the court does act favorably on the motion, the Department cannot readily determine the fiscal impact of such a ruling. On the "savings" side, the Department is currently paying for a court-appointed compliance monitor in the *Cleary* lawsuit. Presumably, these costs will no longer be incurred following termination of the lawsuit. Though not anticipated, it is possible that new litagation could be filed requiring comparable monitoring.

Prepared by Bruce Richards Phone 465-3307

Division Commissioner's Office Date/Time 4/29/99 8:48 AM

Approved by Comm. Margaret M. Pugh Margaret M. Pugh Date 4/29/99

Agency Department of Corrections

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HB 219

Sponsor Statement
HB 219

"An act relating to the Abolition of Rule Against Perpetuities, and providing for an effective date."

. This legislation corrects a technical problem created by the Alaska Trust Act. The Alaska Trust Act effectively repealed the rule against perpetuities. As a practical matter, this old common rule prevented the continuation of trusts for longer than 90 to 110 years. The Alaska Trust Act changed the common law rule to allow a trust to continue in perpetuity if the income of principle of the trust could be distributed in the discretion of the trustee to a person who was living when the trust was created.

The problem with the Alaska Trust Act is that it does not allow a person to create a perpetual charitable lead trust. A typical perpetual charitable lead would pay all income to a charity for a term of 20 years (not to a person who was living when the trust was created) and then would continue in perpetuity for the benefit of the descendants of the person creating the trust. Since the passage of the Alaska Trust Act, many persons have contacted trust companies and attorneys in Alaska and have expressed a desire to create perpetual charitable lead trusts. This new legislation would completely repeal the rule against perpetuities and would permit the creation of perpetual charitable lead trusts.

HB 220

FISCAL NOTE No. 2

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Bill Version: SB 166
(S) Publish Date: 1-18-00

Revision Date/Time (Note if correction) 1/12/00, 5:13 PM
Dept. Affected Law
Title "An Act relating to the amendment and revocation of spouses' community property agreements and ..."
BRU Civil Division
Component Commercial
Sponsor Senate Judiciary Committee by Request
Requester Senate Rules Committee
Component Serial No. 2211

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

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

SB 166 makes technical corrections to the Community Property Act passed in 1998. The bill relates to amending the community property agreement with regard to disposition of the surviving spouse's property after the death of the first spouse.

This bill will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson
Phone 465-5370
Division Attorney General's Office
Date/Time 1/12/00, 5:13 PM
Approved by Commissioner Bruce M. Botelho, Attorney General
Date 1/12/00
Agency Department of Law

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Alaska State Legislature

House of Representatives

House Judiciary Committee

EXPLANATION OF PROPOSED AMENDMENTS TO
ALASKA COMMUNITY PROPERTY ACT
HB 220

- The Alaska Community Property Act is based upon the Uniform Marital Property Act (UMPA). One of the many features shared by both Acts is a provision enabling a married couple to make a non-testamentary disposition under a community property agreement or trust.

- Although the Alaska Community Property Act (ACPA) has successfully enabled many Alaska spouses to form community property agreements and trusts, there is a glitch in the current language of the Act that must be amended to ensure that its purposes are not thwarted.

- Currently, the language in ACPA provides that community property instruments may not be amended or revoked unless the agreement or trust itself provides for revocation "on a particular date or on the occurrence of a particular event," or unless the agreement or trust is amended or revoked by a later community property agreement or trust.

- This language is not only awkward, but may lead to a result that is in opposition to the intent of the married couple who has created the community property instrument.

- The problem is that the above-described provision may create an argument that the surviving spouse does not have the power to amend the agreement. The Act's restrictive language regarding the power to amend only on a particular date or upon the occurrence of a particular event could be interpreted to mean that the surviving spouse really has no meaningful power to amend the agreement.

- In turn, the IRS would then have the power to assess a gift tax on the surviving spouse based on the assets that will go on the agreement's beneficiaries after the surviving spouse's death. This flows from the notion that without any power to amend the instrument, the surviving spouse has, in fact, made a completed taxable gift at the first spouse's death.

- This concern is real and has already been guarded against in the State of Wisconsin through the enactment of an amendment virtually identical to that of HB 220. The Uniform Marital Property Act (UMPA), was also enacted in Wisconsin. In fact, Wisconsin and Alaska are the only two states that have enacted UMPA. Accordingly, Wisconsin also had the same

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awkward, overly-restrictive language that we currently have regarding amending community property agreements and trusts.

- The reality that this language could be misinterpreted to mean that the surviving spouse made a completed taxable gift to the agreements beneficiaries, stemmed from a decision that was handed down by the Seventh Circuit Court of Appeals.

- In *Pyle v. United States*, the Court held that after the death of the first spouse, the surviving spouse did not have the ability to meaningfully change the will. Therefore, the Court reasoned, at that time of the first spouse's death, the surviving spouse made a taxable gift to the residuary beneficiaries who would inherit after the surviving spouse's death. As a result, gift tax was payable at the death of the first spouse, which otherwise would have been deferred until the death of the surviving spouse.

- Wisconsin practitioners became concerned and the Wisconsin legislature amended its community property statute to create a default rule that a surviving spouse may unilaterally amend a community property agreement with respect to property to be disposed of at the death of the surviving spouse. Such a provision would prevent application of the decision of *Pyle v. United States* because the amendment would prevent the gift from being completed until the death of the surviving spouse.

- The proposed amendments to A.S. 34.75.090 and .100 are virtually identical to the amendments enacted by the Wisconsin Legislature.

- The amendments state that if a community property agreement or trust provides for the non-testamentary disposition of property, without probate, at the death of the second spouse, at any time after the death of the first spouse the surviving spouse **may amend** the community property agreement or trust with respect to property to be disposed of at his or her death unless the community property agreement or trust provides otherwise.

- The purpose of this language is to prevent a community property agreement or trust from inadvertently creating a completed gift at the death of the first spouse which would require the payment of federal gift tax, which otherwise would be deferred until the death of the surviving spouse.

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Alaska State Legislature

House of Representatives
House Judiciary Committee

PROPOSED AMENDMENTS

AS 34.75.090. Community property agreement. ***

1. A community property agreement may not be amended or revoked unless the agreement itself provides for revocation on a particular date or on the occurrence of a particular event, or unless the agreement is amended or revoked by a later community property agreement. To amend or revoke the agreement, the later community property agreement is not required to declare any property of the spouses as community property. The amended agreement or the revocation is enforceable without consideration. **However, if a community property agreement provides for the non-testamentary disposition of property, without probate, at the death of the first spouse the second spouse, at any time after the death of the first spouse the surviving spouse may amend the community property agreement with regard to property to be disposed of at his or her death unless the community property agreement expressly provides otherwise.**

AS 34.75.100. Community property trust. ***

(e) A community property trust may not be amended or revoked unless the agreement itself provides for revocation on a particular date or on the occurrence of a particular event or unless the agreement is amended or revoked by a later community property trust. To amend or revoke the trust, the later community property trust is not required to declare any property held by the trustee as community property. The amended trust or revocation is amended without consideration. **However, if a community property trust provides for the non-testamentary disposition of property, without probate, at the death of the second spouse, at any time after death of the first spouse the surviving spouse may amend the community property trust with regard to property to be disposed of at his or her death unless the community property trust expressly provides otherwise.**

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SPONSOR STATEMENT

EXPLANATION OF PROPOSED AMENDMENTS TO ALASKA COMMUNITY PROPERTY ACT

HB 220

The Alaska Community Property Act is based upon the Uniform Marital Property Act. One new feature added by UMPA is the ability of a couple to make a non-testamentary disposition under a community property agreement. Alaska enacted the same provision which is applicable to both community property agreements and community property trusts. Further, the Alaska Act provides that such instruments may not be amended or revoked unless the agreement or trust itself provides for revocation "on a particular date or on the occurrence of a particular event," or unless the agreement or trust is amended or revoked by a later community property agreement or trust.

The above-described provisions may create an argument that the surviving spouse makes a completed taxable gift at the first spouse's death. The following history explains this issue. The Uniform Marital Property Act was previously enacted in Wisconsin. Subsequently, the decision in *Pyle v. United States*, 766 F .2d 1141 (7th Cir. 1985) was decided. This case involved an Illinois joint will. The court held that after the death of the first spouse, the surviving spouse could not change the will. Therefore, at that time, the surviving spouse made a taxable gift to the residuary beneficiaries who would inherit after the surviving spouse's death. As a result, transfer tax was payable at the death of the first spouse, which otherwise would have been deferred until the death of the surviving spouse.

Wisconsin practitioners became concerned, and the Wisconsin legislature amended its community property statute to create a default rule that a surviving spouse may unilaterally amend a community property agreement with respect to property to be disposed of at the death of the surviving spouse. Such a provision would prevent application of the decision of *Pyle v. United States* because the amendment would prevent the gift from being completed until the death of the surviving spouse.

The proposed amendments to A.S. 34.75.090 and .100 are similar to the amendments enacted by the Wisconsin Legislature. They state that if a community property agreement or trust provides for the non-testamentary disposition of property, without probate, at the death of the second spouse, at any time after the death of the first spouse the surviving spouse may amend the community property agreement or trust with respect to property to be disposed of at his or her death, unless the community property

trust provides otherwise. The purpose of this language is to prevent a community property agreement or trust from inadvertently creating a completed gift at the death of the first spouse which would require the payment of federal transfer tax, which otherwise would be deferred until the death of the surviving spouse.

AS 34.75.090. Community property agreement. ***

(e) A community property agreement may not be amended or revoked unless the agreement itself provides for revocation on a particular date or on the occurrence of a particular event, or unless the agreement is amended or revoked by a later community property agreement. To amend or revoke the agreement, the later community property agreement is not required to declare any property of the spouses as community property. The amended agreement or the revocation is enforceable without consideration. **However, if a community property agreement provides for the non-testamentary disposition of property, without probate, at the death of the first spouse the second spouse, at any time after the death of the first spouse the surviving spouse may amend the community property agreement with regard to property to be disposed of at his or her death unless the community property agreement expressly provides otherwise.**

AS 34.75.100. Community property trust. ***

(e) A community property trust may not be amended or revoked unless the agreement itself provides for revocation on a particular date or on the occurrence of a particular event or unless the agreement is amended or revoked by a later community property trust. To amend or revoke the trust, the later community property trust is not required to declare any property held by the trustee as community property. The amended trust or revocation is amended without consideration. **However, if a community property trust provides for the non-testamentary disposition of property, without probate, at the death of the second spouse, at any time after death of the first spouse the surviving spouse may amend the community property trust with regard to property to be disposed of at his or her death unless the community property trust expressly provides otherwise.**

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 220

Revision Date/Time (Note if correction) 1/13/00, 8:24 AM
Dept. Affected Law
Title "An Act relating to the amendment and revocation of spouses' community property agreements and ..."
BRU Civil Division
Component Commercial
Sponsor House Judiciary Committee by Request
Requester House Judiciary Committee
Component Serial No. 2211

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

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

SB 166 makes technical corrections to the Community Property Act passed in 1998. The bill relates to amending the community property agreement with regard to disposition of the surviving spouse's property after the death of the first spouse.

This bill will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Joan M Kasson Phone 465-5370
Division Attorney General's Office Date/Time 1/13/00, 8:24 AM
Approved by Commissioner Bruce M. Botelho, Attorney General Date 1/13/00
Agency Department of Law

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