

ELLEN F. ROSENBLUM
Attorney General



FILED February 12, 2014 03:25 PM
Appellate Court Records

FREDERICK M. BOSS
Deputy Attorney General

DEPARTMENT OF JUSTICE
APPELLATE DIVISION

February 12, 2014

The Honorable Thomas A. Balmer
Chief Justice, Oregon Supreme Court
Supreme Court Building
1163 State Street
Salem, OR 97310

Re: *Mike McNichols v. Ellen Rosenblum, Attorney General, State of Oregon*
SC S061948

Dear Chief Justice Balmer:

Petitioner Mike McNichols has filed a ballot title challenge in the above-referenced matter. Pursuant to ORS 250.067(4), the Secretary of State is required to file with the court the written comments submitted in response to the draft ballot title. Those written comments, under the cover of Elections Division Program Representative Lydia Plukchi's letter, are enclosed for filing with the court. Pursuant to ORAP 11.30(7), we also have enclosed for filing with the court the draft and certified ballot titles, together with their respective cover letters.

Sincerely,

/s/ Judy C. Lucas

Judy C. Lucas
Senior Assistant Attorney General
judy.lucas@doj.state.or.us

JCL:aft/4971176

cc: Michael D. McNichols/without encl.
Anthony Johnson/without encl.

IN THE SUPREME COURT OF THE STATE OF OREGON

MIKE MCNICHOLS,

Petitioner,

v.

ELLEN ROSENBLUM, Attorney
General, State of Oregon,

Respondent.

Supreme Court No. S061948

RESPONDENT'S ANSWERING
MEMORANDUM TO PETITIONS TO
REVIEW BALLOT TITLE RE:
INITIATIVE PETITION NO. 37
(SUPREME COURT)

INTRODUCTION

Petitioner seeks review of the Attorney General's ballot title for Initiative Petition # 37 (2014), which allows limited possession, manufacture, and sale of marijuana by and to adults, subject to Oregon Liquor Control Commission (OLCC) licensing, regulation, and taxation. Petitioner challenges all parts of the ballot title. The court should certify the Attorney General's ballot title without modification.

A. Changes to current law

Currently, Oregon law prohibits cultivation, possession, delivery, and sale of marijuana, except for the regulated production, possession, and use of medical marijuana. This measure would allow limited production, processing, delivery, possession, and sale of marijuana to adults, subject to licensing, regulation, and taxation of manufacturers by the OLCC.

B. The caption

To identify the “actual major effect” of a measure, this court looks to “the text of the proposed measure to determine the changes that the proposed measure would enact in the context of existing law” and then evaluates whether the caption “reasonably identifies those effects.” *Girod v. Kroger*, 351 Or 389, 397, 268 P3d 562 (2011), citing *Rasmussen v. Kroger*, 350 Or 281, 285, 253 P3d 1031 (2011). “Other, subsidiary effects may certainly be described, but each flows from the central effect of the measure * * *.” *Girod*, 351 Or at 398.

The Attorney General’s caption states:

**Allows possession, manufacture, sale of marijuana by/to adults,
subject to state licensing, regulation, taxation**

Petitioner argues that the caption fails to substantially comply with ORS 250.035(2)(a) because the measure’s “biggest change, in the context of existing law,” is to make the use and possession of marijuana legal. He argues that “the major effect of the Petition [measure] is to repeal current criminal laws in Oregon and replace those laws with new laws that allow for the personal possession and use of marijuana in Oregon.” Pet at 4. (Underlining in original). Petitioner contends that the Attorney General’s caption fails to apprise voters of that major effect.

Petitioner is mistaken in asserting that the measure *repeals* current criminal laws and *replaces* them with laws that allow possession and use of marijuana. The measure adds to and amends, rather than repeals, current criminal laws. For example, section 45 of the measure makes importing or exporting marijuana for consideration a Class C felony and not for consideration a Class A misdemeanor. Similarly, section 78 of the measure amends ORS 475.860, which makes unlawful delivery of marijuana a Class B felony if delivery is for consideration, and a Class C felony if delivery is not for consideration. Delivery of marijuana by a person age 18 or older to a minor three years younger remains either a Class A felony or a Class C misdemeanor, depending on the circumstances.

Unlawful possession of marijuana in specified amounts by a person under 21 remains either a Class C felony or a Class B misdemeanor. Section 79, amending ORS 475.864. Unlawful possession by a person age 21 or above is made a Class C felony or a Class B misdemeanor, under specified circumstances. *Id.*

Under Section 77, the unlawful manufacture of marijuana remains a Class B felony—although the circumstances under which manufacture is lawful are expanded under the measure. Unlawful manufacture above a limited

amount of “homegrown” marijuana by an adult “at a household” is a Class B misdemeanor under the measure. Section 77 amends ORS 475.856.

Thus, the measure does not “repeal criminal laws” and “replace” them. Certainly, the measure significantly modifies those criminal laws and narrows the circumstances under which marijuana possession, manufacture, and distribution are unlawful. But a caption informing voters that the measure “repeal[s] criminal laws regulating marijuana in Oregon,” as petitioner seeks, would be inaccurate. Pet at 4.

The Attorney General’s caption substantially complies with ORS 250.035(2)(a).

C. The result statements

The Attorney General’s result statements provide:

Result of “Yes” Vote: “Yes” vote allows possession, authorizes in-state manufacture, processing, sale of marijuana by/to adults; licensing, regulation, taxation by state; retains current medical marijuana laws.

Result of “No” Vote: “No” vote retains laws classifying cannabis as a controlled substance; prohibiting most sale, possession, manufacture of cannabis; permitting production, possession of cannabis for medical use.

Petitioner argues that the result statements fail to substantially comply with ORS 250.035(2)(b) and (c) for the same reason the caption is deficient.

He did not make that argument in his comments on the draft result statements.

Rather, petitioner recommended telling voters about criminal penalties the measure imposed:

[S]evere penalties are included in this proposal for adults and minors who exceed these limits, so the fact the [*sic*] there are felonious limits therein imposed should be mentioned here, at the earliest opportunity.

Accordingly, I suggest the following “Yes” result statement:

Result of “Yes” Vote: “Yes” vote repeals existing marijuana laws; allows possession, Oregon manufacturing, processing, selling marijuana to adults; agency regulation; exempts limited “homegrown marijuana” (defined) from felony penalties.

McNichols comment letter at 3.

In other words, petitioner did not comment that the “Yes” result statement should inform voters that the measure’s major effect is “to repeal current criminal laws in Oregon and replace those laws with new laws.” Nor does his proposed alternative “Yes” statement include language to that effect. Because he did not make that argument with regard to the draft result statements, the court should not consider the argument. ORS 250.085(6).

On the merits, as discussed above, the court should reject petitioner’s argument. The result statements substantially comply with the statutory requirements.

D. The summary

The Attorney General's summary provides:

Summary: Currently, manufacture, possession, delivery, sale of marijuana (cannabis) are unlawful, excepting regulated production, possession, use of medical marijuana. Measure supersedes state, local laws relating to cannabis (marijuana), except medical marijuana and driving under the influence laws. Conforms criminal laws. Allows production, processing, delivery, possession, sale of marijuana to adults, licensed, regulated, taxed by Oregon Liquor Control Commission (OLCC). Producer, processor, wholesaler may deliver "marijuana items" (defined) only to licensed retail premises. City/county may prohibit sales. Limited amounts of "homegrown" marijuana (defined) not regulated, taxed. Taxes marijuana producers. Tax revenues, fees distributed: 40% to Common School Fund; 20% for mental health/alcohol/drug services; 15% for state police; 20% for local law enforcement; 5% to Oregon Health Authority. Other provisions.

Petitioner renews his objection to the caption and result statements with regard to the summary: "[T]he certified summary does not inform the voter that the Petition would repeal – or remove – existing criminal penalties for the possession and/or use of marijuana." Pet at 5. He contends that the measure does not "supersede" current state and local laws relating to marijuana, as the summary states, but rather "actually repeals and replaces existing laws." *Id.*

As above, that is not precisely the same argument petitioner made in his comments on the draft ballot title summary. In those comments, petitioner objected:

The Attorney General's draft summary is misleading when it fails to mention that this proposal includes statutory language that imposes severe penalties, including felonies, on minors and adults for possessing and growing small amounts of marijuana.

* * * Electors are not told that this proposal includes felony penalties for minors and adults for simply possessing what it defines as too much, or growing what it defines as too much.

Finally, Petition #37 creates six brand new felonies in the state of Oregon. At a very minimum, the elector should be informed that Petition #37 could potentially expose the elector to new [*sic*] these new criminal penalties.

McNichols comment letter at 3-4.

Thus, in his comments on the draft summary, petitioner did not argue that the summary must tell voters that the measure “repeals and replaces existing laws,” but rather that the measure imposed new, severe penalties for possessing and growing marijuana. Because his argument before this court is one he did not make at the comment stage, the court should not address it. ORS 250.085(6).

If the court considers petitioner’s current argument, it lacks merit. In support of his argument, petitioner mistakenly relies on *Kane v. Kulongoski*, 318 Or 593, 871 P2d 993 (1994), which concerned the ballot title for “The Oregon Death With Dignity Act.” The petitioners contended that “the main subject of the measure is decriminalizing doctor assisted suicide for terminal patients.” *Kane*, 318 Or at 599. The court disagreed with that proposition, but agreed with the petitioners that the abolition of criminal penalties against a physician who prescribed a lethal drug for physician-assisted suicide was “a

sufficiently major change in Oregon law to deserve note in the Summary.” *Id.* at 602-603.

In contrast to the measure in *Kane*, IP #37 amends and adds new provisions to numerous existing criminal statutes that classify a wide range of marijuana-related activities as various crimes and violations. The Attorney General’s summary adequately informs voters that the measure makes significant changes in the law, by stating:

Currently, manufacture, possession, delivery, sale of marijuana are unlawful, excepting regulated production, possession, use of medical marijuana. Measure allows production, processing, delivery, possession, sale of marijuana to adults, licensed, regulated by Oregon Liquor Control Commission (OLCC).

Voters will understand from those opening sentences in the summary that the measure makes legal, and subjects to regulation, conduct that is currently illegal.

In sum, none of petitioner’s arguments require modification of the Attorney General’s ballot title.

CONCLUSION

The court should certify the Attorney General's ballot title without modification.

Respectfully submitted,

ELLEN F. ROSENBLUM #753239
Attorney General
ANNA M. JOYCE #013112
Solicitor General

/s/ Judy C. Lucas

JUDY C. LUCAS #903285
Senior Assistant Attorney General
judy.lucas@doj.state.or.us

Attorneys for Respondent
Ellen Rosenblum, Attorney General,
State of Oregon

OFFICE OF THE SECRETARY OF STATE

KATE BROWN
SECRETARY OF STATE



ELECTIONS DIVISION

JIM WILLIAMS
DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722

(503) 986-1518

January 14, 2014

The Honorable Ellen Rosenblum, Attorney General
Anna Joyce, Solicitor General
Dept. of Justice, Appellate Division
400 Justice Building
Salem, OR 97310

Re: Michael McNichols v. Ellen Rosenblum, Attorney General, State of Oregon
Petition to Review Ballot Title

Dear Ms. Joyce:

Pursuant to ORS 250.067(4), we transmit to you for filing with the court as part of the record in the above referenced matter, the written comments filed in this office pursuant to ORS 250.067(1), regarding initiative petition #37. We also enclose the draft and certified ballot titles with their respective transmittal letters.

Sincerely,

Lydia Plukchi
Compliance Specialist

enclosures

Prospective Petition for State Measure

SEL 310

rev 1/12: ORS 250.045

To the Secretary of State,

We, the undersigned, request a ballot title for the attached proposed measure to be submitted to the people of Oregon for their approval or rejection at the election to be held on November 4, 2014.

Type of Petition

☒ Initiative

☐ Referendum

☒ Statutory

☐ Constitutional

Designating Chief Petitioners

Every petition must designate not more than three persons as chief petitioners, setting forth the name, residence address and title (if officer of sponsoring organization) of each. All chief petitioners for an initiative or referendum petition must sign this form. Please carefully read the instructions for circulators and signers on the back of this form.

Chief Petitioner Information

Name print

Signature

1 Anthony Johnson

Residence Address, Street/Route

5704 N. Missouri Ave

City

Portland

State

OR

Zip Code

97217

Mailing Address if different, Street/Route

City

State

Zip Code

Email Address and/or Website

Day Phone Number

Sponsoring Organization if any

anthony@newapproach2014.org (503) 752-3966

NEW APPROACH OREGON

Name print

Signature

Residence Address, Street/Route

City

State

Zip Code

Mailing Address if different, Street/Route

City

State

Zip Code

Email Address and/or Website

Day Phone Number

Sponsoring Organization if any

Name print

Signature

Residence Address, Street/Route

City

State

Zip Code

Mailing Address if different, Street/Route

City

State

Zip Code

Email Address and/or Website

Day Phone Number

Sponsoring Organization if any

SEL 301: Statement One or More Petition Circulators Will be Paid

rev 1/12: ORS 250.045, ORS 250.165, ORS 255.165, ORS 255.135

☒ Prospective Petition initial filing with filing officer

I/We hereby declare one or more petition circulators will be paid money or other valuable consideration for obtaining signatures of active registered voters on the attached petition. I/We understand the filing officer must be notified not later than the 10th day after I/we first have knowledge or should have had knowledge that no petition circulator will be compensated for obtaining signatures. By signing this document, I hereby state that no circulators will be compensated on this petition based on the number of signatures obtained by the circulator.

☐ Completed Petition signatures submitted to filing officer

By signing this document, I hereby state that no circulators have been compensated on this petition based on the number of signatures obtained by the circulator.

Identify Petition

Control, Regulation and Taxation of Marijuana and Industrial Hemp Act

10/24/13

Signed

Date Signed

Signed

Date Signed

Signed

Date Signed

→ Statement must be signed by all chief petitioners for an initiative or referendum petition.



Warning

Supplying false information on this form may result in conviction of a felony with a fine of up to \$125,000 and/or prison for up to 5 years.

SEL 301: Statement No Petition Circulators Will be Paid

rev 1/12: ORS 250.045, ORS 250.165, ORS 255.165, ORS 255.135

☐ Prospective Petition Initial Filing with Filing Officer

I/We hereby declare no petition circulators will be paid money or other valuable consideration for obtaining signatures of active registered voters on the attached petition. I/We understand the filing officer must be notified not later than the 10th day after I/we first have knowledge or should have had knowledge that any petition circulator will be compensated for obtaining signatures. By signing this document, I hereby state that no circulators will be compensated on this petition.

☐ Completed Petition Signatures Submitted to filing officer

By signing this document, I hereby state that no circulators were compensated for obtaining signatures on the attached petition.

Identify Petition

Signed

Date Signed

Signed

Date Signed

Signed

Date Signed

→ Statement must be signed by all chief petitioners for an initiative or referendum petition.



Warning

Supplying false information on this form may result in conviction of a felony with a fine of up to \$125,000 and/or prison for up to 5 years.

An Act

Be it Enacted by the People of the State of Oregon:

This Act shall be known as:

Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act

SECTION 1. (1) The People of the State of Oregon declare that the purposes of this Act are:

(a) To eliminate the problems caused by the prohibition and uncontrolled manufacture, delivery, and possession of marijuana within this state;

(b) To protect the safety, welfare, health, and peace of the people of this state by prioritizing the state's limited law enforcement resources in the most effective, consistent, and rational way;

(c) To permit persons licensed, controlled, regulated, and taxed by this state to legally manufacture and sell marijuana to persons 21 years of age and older, subject to the provisions of this Act;

(d) To ensure that the State Department of Agriculture issues industrial hemp licenses and agricultural hemp seed production permits in accordance with existing state law; and

(e) To establish a comprehensive regulatory framework concerning marijuana under existing state law.

(2) The People of the State of Oregon intend that the provisions of this Act, together with the other provisions of existing state law, will:

(a) Prevent the distribution of marijuana to persons under 21 years of age;

(b) Prevent revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;

(c) Prevent the diversion of marijuana from this state to other states;

(d) Prevent marijuana activity that is legal under state law from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

(e) Prevent violence and the use of firearms in the cultivation and distribution of marijuana;

(f) Prevent drugged driving and the exacerbation of other adverse public health consequences associated with the use of marijuana;

(g) Prevent the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and

(h) Prevent the possession and use of marijuana on federal property.

SECTION 2. (1) Sections 3 to 70 of this Act are added to and made a part of the Oregon Revised Statutes.

(2) Section 71 is added to and made a part of ORS chapter 317.

(3) Section 72 is added to and made a part of ORS chapter 475.

(4) Section 73 is added to and made a part of ORS chapter 811.

(General)

SECTION 3. Short title. Sections 3 to 70 of this Act shall be known and may be cited as the Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act.

SECTION 4. Limitations. Sections 3 to 70 of this Act may not be construed:

(1) To amend or affect in any way any state or federal law pertaining to employment matters;

(2) To amend or affect in any way any state or federal law pertaining to landlord-tenant matters;

(3) To prohibit a recipient of a federal grant or an applicant for a federal grant from prohibiting the manufacture, delivery, possession, or use of marijuana to the extent necessary to satisfy federal requirements for the grant;

(4) To prohibit a party to a federal contract or a person applying to be a party to a federal contract from prohibiting the manufacture, delivery, possession, or use of marijuana to the extent necessary to comply with the terms and conditions of the contract or to satisfy federal requirements for the contract;

(5) To require a person to violate a federal law;

(6) To exempt a person from a federal law or obstruct the enforcement of a federal law; or

(7) To amend or affect in any way the Oregon Medical Marijuana Act.

SECTION 5. Definitions. As used in sections 3 to 70 of this Act:

(1) "Authority" means the Oregon Health Authority.

(2) "Commission" means the Oregon Liquor Control Commission.

(3) "Consumer" means a person who purchases, acquires, owns, holds, or uses marijuana items other than for the purpose of resale.

(4) "Department" means the State Department of Agriculture.

(5)(a) "Financial consideration," except as provided in paragraph (b) of this subsection, means value that is given or received directly or indirectly through sales, barter, trade, fees, charges, dues, contributions or donations.

(b) "Financial consideration" does not mean any of the following:

(A) Homegrown marijuana made by another person.

(B) Homemade marijuana products made by another person.

(6) "Homegrown" or "homemade" means grown or made by a person 21 years of age or older for noncommercial purposes.

(7) "Household" means a housing unit, and includes any place in or around the housing unit at which the occupants of the housing unit are producing, processing, keeping, or storing homegrown marijuana or homemade marijuana products.

(8) "Housing unit" means a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied as separate living quarters, in which the occupants live and eat separately from any other persons in the building and which have direct access from the outside of the building or through a common hall.

(9) "Immature marijuana plant" means a marijuana plant with no observable flowers or buds.

(10) "Licensee" means any person holding a license issued under this Act, or any person holding a license or permit issued under any regulation promulgated under paragraph (e) of subsection (2) of section 7 of this Act.

(11) "Licensee representative" means an owner, director, officer, manager, employee, agent, or other representative of a licensee, to the extent such person acts in such representative capacity.

(12) "Marijuana" means all parts of the plant Cannabis family Moraceae, whether growing or not, other than marijuana extracts.

(13) "Marijuana extract" means a product obtained by separating resins from marijuana by solvent extraction, using solvents other than vegetable glycerin, such as butane, hexane, isopropyl alcohol, ethanol, and carbon dioxide.

(14)(a) "Marijuana flowers" means the flowers of the plant Cannabis family Moraceae.

(b) "Marijuana flowers" does not include any part of the plant other than the flowers.

(15) "Marijuana items" means marijuana, marijuana products, and marijuana extracts.

(16)(a) "Marijuana leaves" means the leaves of the plant Cannabis family Moraceae.

(b) "Marijuana leaves" does not include any part of the plant other than the leaves.

(17) "Marijuana processor" means a person who processes marijuana items in this state.

(18) "Marijuana producer" means a person who produces marijuana in this state.

(19)(a) "Marijuana products" means products that contain marijuana or marijuana extracts and are intended for human consumption.

(b) "Marijuana products" does not mean:

(A) Marijuana, by itself; or

(B) A marijuana extract, by itself.

(20) "Marijuana retailer" means a person who sells marijuana items to a consumer in this state.

(21) "Marijuana wholesaler" means a person who purchases marijuana items in this state for resale to a person other than a consumer in this state.

(22) "Mature marijuana plant" means any marijuana plant that is not an immature marijuana plant.

(23) "Noncommercial" means not dependent or conditioned upon the provision or receipt of financial consideration.

(24) "Person" means any natural person, corporation, professional corporation, nonprofit corporation, cooperative corporation, profit or nonprofit unincorporated association, business trust, limited liability company, general or limited partnership, joint venture, or any other legal entity.

(25) "Premises" or "licensed premises" means a location licensed under sections 3 to 70 of this Act and includes:

(a) All enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms, including all public and private areas;

(b) All areas outside of a building that the Oregon Liquor Control Commission has specifically licensed for the production, processing, wholesale sale, or retail sale of marijuana items; and

(c) For a location that the commission has specifically licensed for the production of marijuana outside of a building, the entire lot or parcel, as defined in ORS 92.010, that the licensee owns, leases, or has a right to occupy.

(26)(a) "Processes" means:

(A) The processing, compounding, or conversion of marijuana into marijuana products or marijuana extracts;

(B) The processing, compounding, or conversion of marijuana, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or

by a combination of extraction and chemical synthesis;

(C) The packaging or repackaging of marijuana items; or

(D) The labeling or relabeling of any package or container of marijuana items.

(b) "Processes" does not include:

(A) The drying of marijuana by a marijuana producer, if the marijuana producer is not otherwise processing marijuana; or

(B) The packaging and labeling of marijuana by a marijuana producer in preparation for delivery to a marijuana processor.

(27)(a) "Produces" means the manufacture, planting, cultivation, growing, or harvesting of marijuana.

(b) "Produces" does not include:

(A) The drying of marijuana by a marijuana processor, if the marijuana processor is not otherwise producing marijuana; or

(B) The cultivation and growing of an immature marijuana plant by a marijuana processor, marijuana wholesaler, or marijuana retailer if the marijuana processor, marijuana wholesaler, or marijuana retailer purchased or otherwise received the plant from a licensed marijuana producer.

(28) "Public place" means a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and premises used in connection with public passenger transportation.

(29) "Usable marijuana" means dried marijuana flowers and dried marijuana leaves, and any mixture or preparation thereof.

SECTION 6. Exemptions. (1) Sections 7 to 44 and 60 to 62 of this Act do not apply:

(a) To the production, processing, keeping, or storage of homegrown marijuana at a household by one or more persons 21 years of age and older if the total of homegrown marijuana at the household does not exceed four marijuana plants and eight ounces of usable marijuana at a given time.

(b) To the making, processing, keeping, or storage of homemade marijuana products at a household by one or more persons 21 years of age and older if the total of homemade marijuana products at the household does not exceed sixteen ounces in solid form at a given time.

(c) To the making, processing, keeping, or storage of homemade marijuana products at a household by one or more persons 21 years of age and older if the total of homemade marijuana products at the household does not exceed seventy-two ounces in liquid form at a given time.

(d) To the delivery of not more than one ounce of homegrown marijuana at a given time by a person 21 years of age or older to another person 21 years of age or older for noncommercial purposes.

(e) To the delivery of not more than sixteen ounces of homemade marijuana products in solid form at a given time by a person 21 years of age or older to another person 21 years of age or older for noncommercial purposes.

(f) To the delivery of not more than seventy-two ounces of homemade marijuana products in liquid form at a given time by a person 21 years of age or older to another person 21 years of age or older for noncommercial purposes.

(2) Sections 7 to 70 of this Act:

(a) Do not apply to the extent a person acts within the scope of and in compliance with the Oregon Medical Marijuana Act; or

(b) Do not amend or affect in any way the function, duties, and powers of the Oregon Health Authority under the Oregon Medical Marijuana Act.

SECTION 7. Powers and duties of Oregon Liquor Control Commission. (1) The Oregon Liquor Control Commission has the powers and duties specified in sections 3 to 70 of this Act, and also the powers necessary or proper to enable it to carry out fully and effectually all the purposes of sections 3 to 70 of this Act. The jurisdiction, supervision, powers and duties of the commission extend to any person who buys, sells, produces, processes, transports, or delivers any marijuana items within this state. The commission may sue and be sued.

(2) The function, duties, and powers of the commission in sections 3 to 70 of this Act include the following:

(a) To regulate the purchase, sale, production, processing, transportation, and delivery of marijuana items in accordance with the provisions of sections 3 to 70 of this Act.

(b) To grant, refuse, suspend or cancel licenses for the sale, processing, or production of marijuana items, or other licenses in regard to marijuana items, and to permit, in its discretion, the transfer of a license of any person.

(c) To collect the taxes and duties imposed by sections 3 to 70 of this Act, and to issue, and provide for cancellation, stamps and other devices as evidence of payment of such taxes or duties.

(d) To investigate and aid in the prosecution of every violation of Oregon statutes relating to marijuana items, and cooperate in the prosecution of offenders before any state court of competent jurisdiction.

(e) To adopt such regulations as are necessary and feasible for carrying out the intent and provisions of sections 3 to 70 of this Act and to amend or repeal such regulations. When such regulations are adopted they shall have the full force and effect of law.

(f) To exercise all powers incidental, convenient or necessary to enable it to administer or carry

out any of the provisions of sections 3 to 70 of this Act.

(g) To regulate and prohibit any advertising by manufacturers, processors, wholesalers or retailers of marijuana items by the medium of newspapers, letters, billboards, radio or otherwise.

(h) To regulate the use of marijuana items for scientific, pharmaceutical, manufacturing, mechanical, industrial and other purposes.

(3) On or before January 1, 2016, the commission, after consultation with the State Department of Agriculture and the Oregon Health Authority, shall prescribe forms and adopt such rules and regulations as the commission deems necessary for the implementation and administration of sections 3 to 70 of this Act.

(4) On or before January 1, 2017, the commission shall:

(a) Examine available research, and may conduct or commission new research, to investigate the influence of marijuana on the ability of a person to drive a vehicle and on the concentration of delta-9 tetrahydrocannabinol in a person's blood, in each case taking into account all relevant factors; and

(b) Present the results of the research to the Legislative Assembly and make recommendations to the Legislative Assembly regarding whether any amendments to the Oregon Vehicle Code are appropriate.

(5) The commission has no power to purchase, own, sell, or possess any marijuana items.

SECTION 8. Powers and duties of State Department of Agriculture. The State Department of Agriculture shall assist and cooperate with the Oregon Liquor Control Commission and the Oregon Health Authority to the extent necessary for the commission and the authority to carry out the duties of the commission and the authority under sections 3 to 70 of this Act.

SECTION 9. Powers and duties of Oregon Health Authority. The Oregon Health Authority shall assist and cooperate with the Oregon Liquor Control Commission and the State Department of Agriculture to the extent necessary for the commission and the department to carry out the duties of the commission and the department under sections 3 to 70 of this Act.

SECTION 10. No liability for official acts. No member of the Oregon Liquor Control Commission, the State Department of Agriculture, or the Oregon Health Authority may be sued for doing or omitting to do any act in the performance of duties as prescribed in sections 3 to 70 of this Act.

SECTION 11. Powers; licenses; federal law. (1) Neither the Oregon Liquor Control Commission, the State Department of Agriculture, nor the Oregon Health Authority may refuse to perform any duty under sections 3 to 70 of this Act on the basis that manufacturing, distributing, dispensing, possessing, or using marijuana is prohibited by federal law.

(2) The commission may not revoke or refuse to issue or renew a license under sections 3 to 70 of this Act on the basis that manufacturing, distributing, dispensing, possessing, or using marijuana

is prohibited by federal law.

SECTION 12. Contracts. No contract shall be unenforceable on the basis that manufacturing, distributing, dispensing, possessing, or using marijuana is prohibited by federal law.

SECTION 13. Licensees and licensee representatives. Licensees and licensee representatives may produce, deliver, and possess marijuana items subject to the provisions of sections 3 to 70 of this Act. The production, delivery, and possession of marijuana items by a licensee or a licensee representative in compliance with sections 3 to 70 of this Act shall not constitute a criminal or civil offense under Oregon law.

(Purchaser's Qualifications and Identification)

SECTION 14. Purchaser's qualifications. No licensee or licensee representative may sell or deliver any marijuana items to any person under 21 years of age.

SECTION 15. Limitations on purchasing may be imposed. The Oregon Liquor Control Commission may limit the quantity of marijuana items purchased at any one time by a consumer so as effectually to prevent the resale of marijuana items.

SECTION 16. Requiring identification from certain purchasers. All licensees and licensee representatives, before selling or serving marijuana items to any person about whom there is any reasonable doubt of the person's having reached 21 years of age, shall require such person to produce one of the following pieces of identification:

- (1) The person's passport.
- (2) The person's motor vehicle operator's license, whether issued in this state or by any other state, so long as the license has a picture of the person.
- (3) An identification card issued under ORS 807.400.
- (4) A United States military identification card.
- (5) Any other identification card issued by a state that bears a picture of the person, the name of the person, the person's date of birth and a physical description of the person.

SECTION 17. False statement of age; statement of age as defense. (1) No person shall produce any piece of identification that would falsely indicate the person's age.

(2) If a piece of identification is offered as evidence in any administrative or criminal prosecution of a licensee or licensee representative for sale or service of marijuana items to a person not having reached 21 years of age, the licensee or licensee representative shall be found to have committed no crime or other wrong unless it is demonstrated that a reasonable person would have

determined that the identification exhibited was altered or did not accurately describe the person to whom the marijuana items were sold or served.

(Marijuana Licenses)

SECTION 18. Oregon Liquor Control Commission's licensing duties. (1) On or before January 4, 2016, the Oregon Liquor Control Commission shall begin receiving applications for the licensing of persons to produce, process, and sell marijuana within the state. Upon receipt of a license application, the commission shall not unreasonably delay the processing, approval, or rejection of the application or, if the application is approved, the issuance of the license.

(2) The licenses described in sections 3 to 70 of this Act shall be issued by the commission, subject to its regulations and restrictions and the provisions of sections 3 to 70 of this Act.

(3) The commission may not license a premises that does not have defined boundaries. A licensed premises need not be enclosed by a wall, fence or other structure, but the commission may require that any licensed premises be enclosed as a condition of issuing or renewing a license. The commission may not license premises that are mobile.

SECTION 19. Production license. (1) The production of marijuana is subject to regulation by the Oregon Liquor Control Commission.

(2) A marijuana producer must have a production license issued by the commission for the premises at which the marijuana is produced.

SECTION 20. Processor license. (1) The processing of marijuana items is subject to regulation by the Oregon Liquor Control Commission.

(2) A marijuana processor must have a processor license issued by the commission for the premises at which marijuana items are processed.

SECTION 21. Wholesale license. (1) The wholesale sale of marijuana items is subject to regulation by the Oregon Liquor Control Commission.

(2) A marijuana wholesaler must have a wholesale license issued by the commission for the premises at which marijuana items are received, kept, stored, or delivered.

SECTION 22. Retail license. (1) The retail sale of marijuana items is subject to regulation by the Oregon Liquor Control Commission.

(2) A marijuana retailer must have a retail license issued by the commission for the premises at which marijuana items are sold.

SECTION 23. Examination of books and premises of licensees. (1) The Oregon Liquor Control Commission has the right after 72 hours' notice to the owner or the agent of the owner to make an examination of the books and may at any time make an examination of the premises of any person licensed under sections 3 to 70 of this Act, for the purpose of determining compliance with sections 3 to 70 of this Act and the rules of the commission.

(2) The commission shall not require the books of any licensee to be maintained on the premises of the licensee.

SECTION 24. No "tied house" prohibitions. The same person may hold one or more production licenses, one or more processor licenses, one or more wholesale licenses, and one or more retail licenses.

(Licensing Procedures)

SECTION 25. Characteristics of license. (1) A license granted under sections 3 to 70 of this Act shall:

- (a) Be a purely personal privilege.
 - (b) Be valid for the period stated in the license.
 - (c) Be renewable in the manner provided in section 28 of this Act, except for a cause which would be grounds for refusal to issue such license under section 29 of this Act.
 - (d) Be revocable or suspendible as provided in section 30 of this Act.
 - (e) Be transferable from the premises for which the license was originally issued to another premises subject to the provisions of this Act, any rules of the Oregon Liquor Control Commission and any municipal ordinance or local regulation.
 - (f) Cease upon the death of the licensee, except as provided in subsection (2) of this section.
 - (g) Not constitute property.
 - (h) Not be alienable.
 - (i) Not be subject to attachment or execution.
 - (j) Not descend by the laws of testate or intestate devolution.
- (2) The commission may, by order, provide for the manner and conditions under which:
- (a) Marijuana items left by any deceased, insolvent or bankrupt person or licensee, or subject to a security interest, may be foreclosed, sold under execution or otherwise disposed of.
 - (b) The business of any deceased, insolvent or bankrupt licensee may be operated for a

reasonable period following the death, insolvency or bankruptcy.

(c) A business licensed pursuant to sections 3 to 70 of this Act subject to a security interest may be continued in business by a secured party as defined in ORS 79.0102 for a reasonable period after default on the indebtedness by the debtor.

SECTION 26. License terms; licenses issued for less than year; determination of fees. (1) Except as otherwise provided in this section, all licenses under sections 3 to 70 of this Act and renewals thereof shall be issued for a period of one year which shall expire at 12 midnight on March 31, June 30, September 30 or December 31 of each year.

(2) Notwithstanding subsection (1) of this section, a license issued for the first time to an applicant may be issued for less than a year. The fee for a license issued for less than a year under this subsection is the annual license fee prescribed by section 28 of this Act.

SECTION 27. Delivery of marijuana. A marijuana producer, marijuana processor, or marijuana wholesaler shall deliver marijuana items only to or on a licensed premises. The sale of marijuana items under any license issued by the Oregon Liquor Control Commission for retail sales by a licensee shall be restricted to the premises described in the license, but deliveries may be made by the marijuana retailer to consumers pursuant to bona fide orders received on the licensed premises prior to delivery.

SECTION 28. Application for license; rules; fees. (1) Any person desiring a license or renewal of a license under sections 3 to 70 of this Act shall make application to the Oregon Liquor Control Commission upon forms to be furnished by the commission showing the name and address of the applicant, location of the place of business that is to be operated under the license, and such other pertinent information as the commission may require. No license shall be granted or renewed until the applicant has complied with the provisions of sections 3 to 70 of this Act and the rules of the commission.

(2) The commission may reject any application that is not submitted in the form required by rule. The commission shall give applicants an opportunity to be heard if an application is rejected. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS chapter 183.

(3) Except as provided in subsection (2) of this section, a revocation of, or a refusal to issue or renew, a license under sections 3 to 70 of this Act is subject to the requirements for contested case proceedings under ORS chapter 183.

(4) The commission shall assess a nonrefundable fee for processing a new or renewal application for any license authorized by sections 3 to 70 of this Act. The application processing fee shall be \$250.

(5) The annual license fee for any license granted under sections 3 to 70 of this Act shall be \$1,000. The license fee is nonrefundable and shall be paid by each applicant upon the granting or committing of a license.

SECTION 29. Grounds for refusing to issue license. (1) The Oregon Liquor Control Commission may not license any applicant under the provisions of sections 3 to 70 of this Act if the applicant is under 21 years of age.

(2) The Oregon Liquor Control Commission may refuse to license any applicant under the provisions of sections 3 to 70 of this Act if the commission has reasonable ground to believe any of the following to be true:

(a) That there are sufficient licensed premises in the locality set out in the application, or that the granting of a license in the locality set out in the application is not demanded by public interest or convenience. In determining whether there are sufficient licensed premises in the locality, the commission shall consider seasonal fluctuations in the population of the locality and shall ensure that there are adequate licensed premises to serve the needs of the locality during the peak seasons.

(b) That the applicant:

(A) Is in the habit of using alcoholic beverages, habit-forming drugs, marijuana, or controlled substances to excess.

(B) Has made false statements to the commission.

(C) Is incompetent or physically unable to carry on the management of the establishment proposed to be licensed.

(D) Has been convicted of violating a general or local law of this state or another state, or of violating a federal law, if the conviction is substantially related to the fitness and ability of the applicant to lawfully carry out activities under the license.

(E) Has maintained an insanitary establishment.

(F) Is not of good repute and moral character.

(G) Did not have a good record of compliance with sections 3 to 70 of this Act or any rule of the commission adopted pursuant thereto.

(H) Is not the legitimate owner of the business proposed to be licensed, or other persons have ownership interests in the business which have not been disclosed.

(I) Is not possessed of or has not demonstrated financial responsibility sufficient to adequately meet the requirements of the business proposed to be licensed.

(J) Is unable to understand the laws of Oregon relating to marijuana or the rules of the commission.

(3) Notwithstanding subparagraph (D) of paragraph (b) of subsection (2) of this section, in determining whether the commission may refuse to license an applicant, the commission may not consider the prior conviction of the applicant or any owner, director, officer, manager, employee, agent, or other representative of the applicant for:

(a) The manufacture of marijuana, if:

(A) The date of the conviction is more than five years before the date of the application; and

(B) The person has not been convicted more than once for the manufacture or delivery of marijuana;

(b) The delivery of marijuana to a person 21 years of age or older, if:

(A) The date of the conviction is more than five years before the date of the application; and

(B) The person has not been convicted more than once for the manufacture or delivery of marijuana; or

(c) The possession of marijuana.

SECTION 30. Grounds for cancellation or suspension of license. (1) The Oregon Liquor Control Commission may cancel or suspend any license issued under sections 3 to 70 of this Act, if the commission finds or has reasonable ground to believe any of the following to be true:

(a) That the licensee:

(A) Has violated any provision of sections 3 to 70 of this Act or any rule of the commission adopted pursuant thereto.

(B) Has made any false representation or statement to the commission in order to induce or prevent action by the commission.

(C) Has maintained an insanitary establishment.

(D) Is insolvent or incompetent or physically unable to carry on the management of the establishment of the licensee.

(E) Is in the habit of using alcoholic liquor, habit-forming drugs, marijuana, or controlled substances to excess.

(F) Has misrepresented to a customer or the public any marijuana items sold by the licensee.

(G) Since the granting of the license, has been convicted of a felony, of violating any of the marijuana laws of this state, general or local, or of any misdemeanor or violation of any municipal ordinance committed on the licensed premises.

(b) That there is any other reason that, in the opinion of the commission, based on public convenience or necessity, warrants canceling or suspending such license.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(Marijuana Tax)

SECTION 31. Administration by Oregon Liquor Control Commission. The Oregon Liquor Control Commission shall administer sections 31 to 44 of this Act, and shall prescribe forms and make such rules and regulations as it deems necessary to enforce sections 31 to 44 of this Act.

SECTION 32. Definition of "sale". (1) As used in sections 31 to 44 of this Act, "sale" or "sold" means any transfer, exchange or barter, in any manner or by any means, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling marijuana, for advertising, as a means of evading sections 31 to 44 of this Act, or for any other purpose.

(2) If a marijuana producer also holds one or more processor licenses, one or more wholesale licenses, or one or more retail licenses, a sale of marijuana flowers, marijuana leaves, or immature marijuana plants will be deemed to occur if and when the marijuana producer processes or takes any other action with respect to such marijuana flowers, marijuana leaves, or immature marijuana plants for which a processor license, wholesale license, or retail license is required, regardless of whether the marijuana producer continues to own or possess the marijuana flowers, marijuana leaves, or immature marijuana plants.

SECTION 33. Tax on marijuana. (1) A tax is imposed upon the privilege of engaging in business as a marijuana producer at the rate of:

- (a) \$35 per ounce on all marijuana flowers;
- (b) \$10 per ounce on all marijuana leaves; and
- (c) \$5 per immature marijuana plant.

(2) The rates of tax imposed by this section upon marijuana flowers and marijuana leaves apply proportionately to quantities of less than one ounce.

(3) The tax imposed by this section shall be measured by the quantities of marijuana flowers, marijuana leaves, and immature marijuana plants produced and sold by any marijuana producer. The taxes specified in this section shall be levied and assessed to the marijuana producer at the time of the first sale of the marijuana flowers, marijuana leaves, and immature marijuana plants by the marijuana producer.

(4) For reporting periods beginning on or after July 1, 2017, the rates of tax under subsection (1) of this section shall be adjusted for each biennium according to the cost-of-living adjustment for the calendar year. The Oregon Liquor Control Commission shall recompute the rates for each biennium by adding to each rate in subsection (1) of this section the product obtained by multiplying the rate by a factor that is equal to 0.25 multiplied by the percentage (if any) by which the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31 of the prior calendar year exceeds the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31, 2015.

(5) The commission shall regularly review the rates of tax under subsection (1) of this section and make recommendations to the Legislative Assembly regarding appropriate adjustments to the

rates that will further the purposes of:

- (a) Maximizing net revenue;
- (b) Minimizing the illegal marijuana industry under Oregon law; and
- (c) Discouraging the use of marijuana by minors under 21 years of age.

SECTION 34. Payment of taxes; refunds; interest or penalty; appeal. (1) The privilege tax imposed by section 33 of this Act shall be paid to the Oregon Liquor Control Commission. The taxes covering the periods for which statements are required to be rendered by section 35 of this Act shall be paid before the time for filing such statements expires. If not so paid, a penalty of 10 percent and interest at the rate of one percent a month or fraction of a month shall be added and collected. The commission may refund any tax payment imposed upon or paid in error by any licensee.

(2) The commission may waive any interest or penalty assessed to a marijuana producer subject to the tax imposed under section 33 of this Act if the commission, in its discretion, determines that the marijuana producer has made a good faith attempt to comply with the requirements of sections 31 to 44 of this Act.

(3) Except in the case of fraud, the commission may not assess any interest or penalty on any tax due under section 33 of this Act following the expiration of 36 months from the date on which was filed the statement required under section 35 of this Act reporting the quantities of marijuana flowers, marijuana leaves, and immature marijuana plants upon which the tax is due.

(4) A marijuana producer may appeal a tax imposed under section 33 of this Act in the manner of a contested case under ORS chapter 183.

SECTION 35. Statements by marijuana producers as to quantities sold. On or before the 20th day of each month, every marijuana producer shall file with the Oregon Liquor Control Commission a statement of the quantities of marijuana flowers, marijuana leaves, and immature marijuana plants sold by the marijuana producer during the preceding calendar month.

SECTION 36. Estimate by Oregon Liquor Control Commission when statement not filed or false statement filed. If any marijuana producer fails, neglects or refuses to file a statement required by section 35 of this Act or files a false statement, the Oregon Liquor Control Commission shall estimate the quantities of marijuana flowers, marijuana leaves, and immature marijuana plants sold by the marijuana producer and assess the privilege taxes thereon. The marijuana producer shall be estopped from complaining of the quantities so estimated.

SECTION 37. Lien created by the tax. The privilege tax required to be paid by section 33 of this Act constitutes a lien upon, and has the effect of an execution duly levied against, any and all property of the marijuana producer, attaching at the time the marijuana flowers, marijuana leaves, and immature marijuana plants subject to the tax were sold, and remaining until the tax is paid. The lien created by this section is paramount to all private liens or encumbrances.

SECTION 38. Records to be kept by marijuana producers. Every marijuana producer shall keep a complete and accurate record of all sales of marijuana flowers, marijuana leaves, and immature marijuana plants, and a complete and accurate record of the number of ounces of marijuana flowers produced, the number of ounces of marijuana leaves produced, the number of immature marijuana plants produced, and the dates of production. The records shall be in such form and contain such other information as the Oregon Liquor Control Commission may prescribe.

SECTION 39. Inspection of marijuana producer's records; records to be kept for prescribed period. (1) The Oregon Liquor Control Commission may, at any time, examine the books and records of any marijuana producer, and may appoint auditors, investigators and other employees that the commission considers necessary to enforce its powers and perform its duties under sections 31 to 44 of this Act.

(2) Every marijuana producer shall maintain and keep for two years all records, books and accounts required by sections 31 to 44 of this Act and shall provide copies of those records, books and accounts to the commission when requested by the commission.

SECTION 40. Failure to pay tax or maintain records. (1) No marijuana producer shall:

(a) Fail to pay the privilege tax prescribed in section 33 of this Act when it is due; or

(b) Falsify the statement required by section 35 of this Act.

(2) No person shall:

(a) Refuse to permit the Oregon Liquor Control Commission or any of its representatives to make an inspection of the books and records authorized by sections 38 and 39 of this Act;

(b) Fail to keep books of account prescribed by the commission or required by sections 31 to 44 of this Act;

(c) Fail to preserve the books for two years for inspection of the commission; or

(d) Alter, cancel or obliterate entries in the books of account for the purpose of falsifying any record required by sections 31 to 44 of this Act to be made, maintained or preserved.

SECTION 41. Applicability to interstate and foreign commerce. Sections 31 to 44 of this Act do not apply to commerce with foreign nations or commerce with the several states, except in so far as the same may be permitted under the Constitution and laws of the United States.

SECTION 42. State has exclusive right to tax marijuana. No county or city of this state shall impose any fee or tax, including occupation taxes, privilege taxes and inspection fees, in connection with the purchase, sale, production, processing, transportation, and delivery of marijuana items.

(Distribution of Moneys)

SECTION 43. Disposition of moneys; revolving fund. (1) All money collected by the Oregon Liquor Control Commission under sections 3 to 70 of this Act shall be remitted to the State Treasurer who shall credit it to a suspense account of the commission. Whenever the commission determines that moneys have been received by it in excess of the amount legally due and payable to the commission or that it has received money to which it has no legal interest, or that any license fee or deposit is properly refundable, the commission is authorized and directed to refund such money by check drawn upon the State Treasurer and charged to the suspense account of the commission. After withholding refundable license fees and such sum, not to exceed \$250,000, as it considers necessary as a revolving fund for a working cash balance for the purpose of paying travel expenses, advances, other miscellaneous bills and extraordinary items which are payable in cash immediately upon presentation, the commission shall direct the State Treasurer to transfer the money remaining in the suspense account to the Oregon Marijuana Account established under section 44 of this Act. Moneys in the Oregon Marijuana Account are continuously appropriated to the commission to be distributed and used as required or allowed by Oregon law.

(2) All necessary expenditures of the commission incurred in carrying out sections 3 to 70 of this Act, including such sums necessary to reimburse the \$250,000 revolving fund, shall be paid from the Oregon Marijuana Account.

SECTION 44. Distribution of available moneys in Oregon Marijuana Account. (1) There is established the Oregon Marijuana Account, separate and distinct from the General Fund.

(2) At the end of each month, the Oregon Liquor Control Commission shall certify the amount of moneys available for distribution in the Oregon Marijuana Account and, after withholding such moneys as it may deem necessary to carry out its obligations under sections 3 to 70 of this Act, shall within 35 days of the month for which a distribution is made distribute the moneys as follows:

(a) Forty percent shall be transferred to the Common School Fund;

(b) Twenty percent shall be transferred to the Mental Health Alcoholism and Drug Services Account established under ORS 430.380;

(c) Fifteen percent shall be transferred to the State Police Account established under ORS 181.175;

(d) To assist local law enforcement in performing its duties under this Act, ten percent shall be transferred to the cities of the state in the following shares:

(A) For all distributions made from the Oregon Marijuana Account before July 1, 2017, in such shares as the population of each city bears to the population of the cities of the state, as determined by the State Board of Higher Education last preceding such apportionment, under ORS 190.510 to 190.610; and

(B) For all distributions made from the Oregon Marijuana Account on or after July 1, 2017:

(i) Fifty percent of such ten percent shall be transferred in such shares as the number of licenses issued by the commission under sections 19 to 21 of this Act during the calendar year preceding the date of the distribution for premises located in each city bears to the number of such licenses issued

by the commission during such calendar year for all premises in the state; and

(ii) Fifty percent of such ten percent shall be transferred in such shares as the number of licenses issued by the commission under section 22 of this Act during the calendar year preceding the date of the distribution for premises located in each city bears to the number of such licenses issued by the commission during such calendar year for all premises in the state;

(e) To assist local law enforcement in performing its duties under this Act, ten percent shall be transferred to counties in the following shares:

(A) For all distributions made from the Oregon Marijuana Account before July 1, 2017, in such shares as their respective populations bear to the total population of the state, as estimated from time to time by the State Board of Higher Education; and

(B) For all distributions made from the Oregon Marijuana Account on or after July 1, 2017:

(i) Fifty percent of such ten percent shall be transferred in such shares as the number of licenses issued by the commission under sections 19 to 21 of this Act during the calendar year preceding the date of the distribution for premises located in each county bears to the number of such licenses issued by the commission during such calendar year for all premises in the state; and

(ii) Fifty percent of such ten percent shall be transferred in such shares as the number of licenses issued by the commission under section 22 of this Act during the calendar year preceding the date of the distribution for premises located in each county bears to the number of such licenses issued by the commission during such calendar year for all premises in the state; and

(f) Five percent shall be transferred to the Oregon Health Authority to be used for the establishment, operation, and maintenance of alcohol and drug abuse prevention, early intervention and treatment services.

(3) It is the intent of this section that the moneys distributed from the Oregon Marijuana Account to the distributees in subsection (2) of this section are in addition to any other available moneys to such distributees and do not supplant moneys available from any other source.

(Prohibitions Relating to Marijuana)

SECTION 45. Importing and exporting marijuana prohibited. (1) Marijuana items may not be imported into this state or exported from this state by any licensee or licensee representative.

(2) A violation of subsection (1) of this section is a:

(a) Class C felony, if the importation or exportation is for consideration; or

(b) Class A misdemeanor, if the importation or exportation is not for consideration.

SECTION 46. Marijuana may not be given as prize. Marijuana items may not be given as a prize, premium or consideration for a lottery, contest, game of chance or skill, or competition of any kind.

SECTION 47. Providing marijuana to intoxicated person; allowing consumption by minor on property. (1) A person may not sell, give or otherwise make available any marijuana items to any person who is visibly intoxicated.

(2)(a) A person who exercises control over private real property may not knowingly allow any other person under the age of 21 years to consume marijuana items on the property, or allow any other person under the age of 21 years to remain on the property if the person under the age of 21 years consumes marijuana items on the property.

(b) This subsection:

(A) Applies only to a person who is present and in control of the location at the time the consumption occurs; and

(B) Does not apply to the owner of rental property, or the agent of an owner of rental property, unless the consumption occurs in the individual unit in which the owner or agent resides.

SECTION 48. Misrepresentation by licensee and others; maintenance of disorderly establishment.

(1) No person shall make false representations or statements to the Oregon Liquor Control Commission in order to induce or prevent action by the commission.

(2) No licensee of the commission shall maintain a noisy, lewd, disorderly or insanitary establishment or supply impure or otherwise deleterious marijuana items.

(3) No licensee of the commission shall misrepresent to a customer or to the public any marijuana items.

SECTION 49. Attempted purchase of marijuana by person under 21; entry of licensed premises by person under 21. (1) A person under 21 years of age may not attempt to purchase marijuana items.

(2) Except as authorized by rule or as necessitated in an emergency, a person under 21 years of age may not enter or attempt to enter any portion of a licensed premises that is posted or otherwise identified as being prohibited to the use of minors.

(3) A person who violates subsection (1) or (2) of this section commits a Class B violation.

(4) In addition to and not in lieu of any other penalty established by law, a person under 21 years of age who violates subsection (1) of this section through misrepresentation of age may be required to perform community service and the court shall order that the person's driving privileges and right to apply for driving privileges be suspended for a period not to exceed one year. If a court has issued an order suspending driving privileges under this section, the court, upon petition of the person, may withdraw the order at any time the court deems appropriate. The court notification to the Department of Transportation under this subsection may include a recommendation that the person be granted a hardship permit under ORS 807.240 if the person is otherwise eligible for the permit.

(5) If a person cited under this section is at least 13 years of age but less than 21 years of age at

the time the person is found in default under ORS 153.102 or 419C.472 for failure to appear, in addition to and not in lieu of any other penalty, the court shall issue notice under ORS 809.220 to the department for the department to suspend the person's driving privileges under ORS 809.280 (4).

(6) The prohibitions of this section do not apply to a person under 21 years of age who is acting under the direction of the Oregon Liquor Control Commission or under the direction of state or local law enforcement agencies for the purpose of investigating possible violations of laws prohibiting sales of marijuana items to persons who are under 21 years of age.

SECTION 50. Compliance with standards. (1) No marijuana items shall be sold or offered for sale within this state unless such marijuana items comply with the minimum standards fixed pursuant to law.

(2) The Oregon Liquor Control Commission may require a marijuana producer, marijuana processor, or marijuana wholesaler to provide a laboratory analysis demonstrating to the satisfaction of the commission that particular marijuana items comply with the minimum standards in this state.

(3) No marijuana items offered for sale within this state may be altered or tampered with in any way by any person not licensed to do so by the commission.

(4) The commission may prohibit the sale of any marijuana items for a reasonable period of time while it is determining whether the marijuana items comply with minimum standards in this state.

SECTION 51. Use of misleading mark or label on container; injurious or adulterated ingredients.

(1) No licensee shall use or allow the use of any mark or label on the container of any marijuana items which are kept for sale, if the container does not precisely and clearly indicate the nature of its contents or in any way might deceive any customer as to the nature, composition, quantity, age or quality of such marijuana items.

(2) The Oregon Liquor Control Commission may prohibit any licensee from selling any brand of marijuana items which in its judgment is deceptively labeled or branded as to content, or contains injurious or adulterated ingredients.

SECTION 52. Minimum age requirement. (1) A licensee may not employ any person under 21 years of age in any part of any licensed premises.

(2) During any inspection of a licensed premises, the Oregon Liquor Control Commission may require proof that a person performing work at the premises is 21 years of age or older. If the person does not provide the commission with acceptable proof of age upon request, the commission may require the person to immediately cease any activity and leave the premises until the commission receives acceptable proof of age. This subsection does not apply to a person temporarily at the premises to make a service, maintenance or repair call or for other purposes independent of the premises operations.

(3) If a person performing work has not provided proof of age requested by the commission

under subsection (2) of this section, the commission may request that the licensee provide proof that the person is 21 years of age or older. Failure of the licensee to respond to a request made under this subsection by providing acceptable proof of age for a person is prima facie evidence that the licensee has allowed the person to perform work at the licensed premises in violation of the minimum age requirement.

SECTION 53. Mature marijuana plants. (1) Except for licensed marijuana producers and their licensee representatives, no licensee may possess a mature marijuana plant.

(2) No licensee may sell a mature marijuana plant.

SECTION 54. Use of marijuana in public place prohibited. (1) It is unlawful for any person to engage in the use of marijuana items in a public place.

(2) A violation of subsection (1) of this section is a Class B violation.

SECTION 55. Possession of marijuana in correctional facility prohibited. (1) It is unlawful for any person to possess or engage in the use of marijuana items in a correctional facility as defined in ORS 162.135 or in a youth correction facility as defined in ORS 162.135.

(2) A violation of subsection (1) of this section is a Class B violation.

SECTION 56. Homegrown marijuana in public view prohibited. (1) No person may produce, process, keep, or store homegrown marijuana or homemade marijuana products if the homegrown marijuana or homemade marijuana products can be readily seen by normal unaided vision from a public place.

(2) A violation of subsection (1) of this section is a Class B violation.

SECTION 57. Homemade marijuana extracts prohibited. No person may produce, process, keep, or store homemade marijuana extracts.

(Cities and Counties; Local Option)

SECTION 58. Marijuana laws supersede and repeal inconsistent charters and ordinances. Sections 3 to 70 of this Act, designed to operate uniformly throughout the state, shall be paramount and superior to and shall fully replace and supersede any and all municipal charter enactments or local ordinances inconsistent with it. Such charters and ordinances hereby are repealed.

SECTION 59. Authority of cities and counties over establishments that serve marijuana. (1) Cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that sell marijuana to consumers if the city or county makes specific findings that the establishment would cause adverse effects to occur.

(2) The authority granted to cities and counties by this section is in addition to, and not in lieu of, the authority granted to a city or county under its charter and the statutes and Constitution of this state.

SECTION 60. Petition and election for local option. (1) The governing body of a city or a county, when a petition is filed as provided in this section, shall order an election on the question whether the operation of licensed premises shall be prohibited in the city or county.

(2) Except as provided in subsections (3), (4) and (5) of this section, the requirements for preparing, circulating and filing a petition under this section:

(a) In the case of a city, shall be as provided for an initiative petition under ORS 250.265 to 250.346.

(b) In the case of a county, shall be as provided for an initiative petition under ORS 250.165 to 250.235.

(3) A petition under subsection (2) of this section:

(a) Must be filed not less than 60 days before the day of the election; and

(b) Must be signed by not less than 10 percent of the electors registered in the city or county.

(4) If ORS 250.155 makes ORS 250.165 to 250.235 inapplicable to a county or if ORS 250.255 makes ORS 250.265 to 250.346 inapplicable to a city, the requirements for preparing, circulating and filing a petition under this section shall be as provided for an initiative petition under the county or city charter or an ordinance adopted under the county or city charter.

(5) No signature is valid unless signed within 180 days before the petition is filed.

(6) An election under this section shall be held at the time of the next statewide general election.

(7) An election under this section shall be conducted under ORS chapters 246 to 260.

SECTION 61. Sales not affected by local option laws. Section 60 of this Act shall not prevent any person residing in the county or city from having, for personal use, marijuana items purchased from marijuana retailers duly licensed under this Act.

SECTION 62. Effective date of local option. In each county or city that returns a majority vote for or against prohibition, the law shall take effect on January 1 following the day of election.

(Enforcement of Marijuana Laws)

SECTION 63. Duty of officers to enforce and to inform district attorney. The state police, sheriffs, constables and all police officers within the State of Oregon shall enforce sections 3 to 30 of this Act and sections 45 to 70 of this Act and assist the Oregon Liquor Control Commission in detecting

violations of sections 3 to 30 of this Act and sections 45 to 70 of this Act and apprehending offenders. Each such enforcing officer having notice, knowledge or reasonable ground of suspicion of any violation of sections 3 to 30 of this Act or sections 45 to 70 of this Act shall immediately notify the district attorney, and furnish the district attorney with names and addresses of any witnesses, or other information within the officer's knowledge, of such violation.

SECTION 64. Confiscation of marijuana and property. (1) Whenever any officer arrests any person for violation of sections 3 to 30 of this Act or sections 45 to 70 of this Act, the officer may take into possession all marijuana items, and other property which the person so arrested has in possession, or on the premises, which is apparently being used in violation of sections 3 to 30 of this Act or sections 45 to 70 of this Act.

(2) If the person so arrested is convicted, and it is found that the marijuana items, and other property has been used in violation of Oregon law:

(a) The marijuana items shall be forfeited to an appropriate state or local law enforcement agency, and shall be delivered by the court or officer to the law enforcement agency; and

(b) Subject to other applicable law, the other property shall be forfeited to the Oregon Liquor Control Commission, and shall be delivered by the court or officer to the commission.

(3) The commission is authorized to destroy or make such other disposition of any property it receives under paragraph (b) of subsection (2) of this section as it considers to be in the public interest. In any such case, all such property, including lockers, chairs, tables, cash registers, music devices, gambling devices, furniture, furnishings, equipment and facilities for the storing, serving or using of marijuana items shall be confiscated and forfeited to the state, and the clear proceeds shall be deposited with the State Treasury in the Common School Fund in the manner provided in this section.

SECTION 65. Duty to notify Oregon Liquor Control Commission of conviction of licensee. The county courts, district attorneys and municipal authorities, immediately upon the conviction of any licensee of the Oregon Liquor Control Commission of a violation of any provision of sections 3 to 30 of this Act or sections 45 to 70 of this Act or the violation of any other law of this state or ordinance of any municipality therein, in which violation marijuana had any part, shall notify the commission thereof. Such officials shall notify the commission of any acts, practices or other conduct of any such licensee which may be subversive of the general welfare or contrary to the spirit of this Act and shall recommend such action on the part of the commission as will remove the evil.

SECTION 66. Property and places as common nuisances. Any room, house, building, boat, structure or place of any kind where marijuana items are sold, manufactured, bartered or given away in violation of Oregon law, or where persons are permitted to resort for the purpose of using marijuana items in violation of Oregon law, or any place where marijuana items are kept for sale, barter or gift in violation of Oregon law, and all marijuana items or property subject to confiscation under section 64 of this Act kept and used in such place is a common nuisance. Any person who maintains or assists in maintaining such common nuisance or knowingly suffers or permits such nuisance to exist in any place of which the person is the owner, manager or lessor, shall be guilty of a violation of sections 3 to 30 of this Act and sections 45 to 70 of this Act.

SECTION 67. Lien on place used to unlawfully handle marijuana. If it is proved that the owner of any building or premises knowingly has suffered the same to be used or occupied for the manufacture, sale or possession of marijuana items, contrary to the provisions of sections 3 to 30 of this Act or sections 45 to 70 of this Act, such building or premises are subject to a lien for, and may be sold to pay all fines and costs assessed against their occupants for any violation of sections 3 to 30 of this Act or sections 45 to 70 of this Act. The lien shall be enforced immediately by civil action in any court having jurisdiction, by the district attorney of the county wherein the building or premises are located.

SECTION 68. Governor authorized to suspend license. In case of invasion, disaster, insurrection, riot, or imminent danger thereof, the Governor may, for the duration of such invasion, disaster, insurrection, riot, or imminent danger thereof, immediately suspend without notice any license in the area involved granted under sections 3 to 30 of this Act or sections 45 to 70 of this Act.

(Penalties)

SECTION 69. Penalties. (1) Except where other punishment is specifically provided for in sections 3 to 70 of this Act, violation of any provision of sections 3 to 70 of this Act is a Class A misdemeanor.

(2) A violation of subsection (1) of section 40 of this Act is a Class B misdemeanor.

(3) Subject to ORS 153.022, violation of any regulation promulgated under paragraph (e) of subsection (2) of section 7 of this Act is a Class C violation.

SECTION 70. Severability. If any sections, subsections, paragraphs, phrases, or words of sections 3 to 70 of this Act shall be held unconstitutional, void, or illegal, either on their face or as applied, this shall not affect the applicability, constitutionality, or legality of any other sections, subsections, paragraphs, phrases, and words of sections 3 to 70 of this Act. To that end, the sections, subsections, paragraphs, phrases, and words of sections 3 to 70 of this Act are intended to be severable. It is hereby declared to be the intent of sections 3 to 70 of this Act that sections 3 to 70 of this Act would have been adopted had such unconstitutional, void, or illegal sections, subsections, paragraphs, phrases, or words, if any, not been included in sections 3 to 70 of this Act.

SECTION 71. Section 280E of the Internal Revenue Code. Section 280E of the Internal Revenue Code does not apply for purposes of determining taxable income or loss under this chapter.

SECTION 72. Definition of controlled substance. As used in the following statutes and any rule adopted thereunder, the term "controlled substance" shall not include marijuana:

(1) ORS 475.125 to ORS 475.165 (registration with the State Board of Pharmacy).

(2) ORS 475.175 to ORS 475.190 (records).

SECTION 73. Use of marijuana while driving; penalty. (1) A person commits the offense of use of marijuana while driving if the person uses any marijuana while driving a motor vehicle upon a highway.

(2) The offense described in this section, use of marijuana while driving, is a Class B traffic violation.

SECTION 74. ORS 316.680, as amended by section 3, chapter 194, Oregon Laws 2013, is amended to read:

316.680 Modification of taxable income. (1) There shall be subtracted from federal taxable income:

(a) The interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. However, the amount subtracted under this paragraph shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this paragraph, and by any expenses incurred in the production of interest or dividend income described in this paragraph to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

(b) The amount of any federal income taxes accrued by the taxpayer during the taxable year as described in ORS 316.685, less the amount of any refunds of federal taxes previously accrued for which a tax benefit was received.

(c) Amounts allowable under sections 2621(a)(2) and 2622(b) of the Internal Revenue Code to the extent that the taxpayer does not elect under section 642(g) of the Internal Revenue Code to reduce federal taxable income by those amounts.

(d) Any supplemental payments made to JOBS Plus Program participants under ORS 411.892.

(e)(A) Federal pension income that is attributable to federal employment occurring before October 1, 1991. Federal pension income that is attributable to federal employment occurring before October 1, 1991, shall be determined by multiplying the total amount of federal pension income for the tax year by the ratio of the number of months of federal creditable service occurring before October 1, 1991, over the total number of months of federal creditable service.

(B) The subtraction allowed under this paragraph applies only to federal pension income received at a time when:

(i) Benefit increases provided under chapter 569, Oregon Laws 1995, are in effect; or

(ii) Public Employees Retirement System benefits received for service prior to October 1, 1991, are exempt from state income tax.

(C) As used in this paragraph:

(i) "Federal creditable service" means those periods of time for which a federal employee earned a federal pension.

(ii) "Federal pension" means any form of retirement allowance provided by the federal government, its agencies or its instrumentalities to retirees of the federal government or their beneficiaries.

(f) Any amount included in federal taxable income for the tax year that is attributable to the conversion of a regular individual retirement account into a Roth individual retirement account described in section 408A of the Internal Revenue Code, to the extent that:

(A) The amount was subject to the income tax of another state or the District of Columbia in a prior tax year; and

(B) The taxpayer was a resident of the other state or the District of Columbia for that prior tax year.

(g) Any amounts awarded to the taxpayer by the Public Safety Memorial Fund Board under ORS 243.954 to 243.974 to the extent that the taxpayer has not taken the amount as a deduction in determining the taxpayer's federal taxable income for the tax year.

(h) If included in taxable income for federal tax purposes, the amount withdrawn during the tax year in qualified withdrawals from a college savings network account established under ORS 348.841 to 348.873.

(i) For income tax years commencing on or after January 1, 2015, the amount of any deductions or credits that the taxpayer would have been allowed but for the provisions of section 280E of the Internal Revenue Code.

(2) There shall be added to federal taxable income:

(a) Interest or dividends, exempt from federal income tax, on obligations or securities of any foreign state or of a political subdivision or authority of any foreign state. However, the amount added under this paragraph shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this paragraph and by any expenses incurred in the production of interest or dividend income described in this paragraph.

(b) Interest or dividends on obligations of any authority, commission, instrumentality and territorial possession of the United States that by the laws of the United States are exempt from federal income tax but not from state income taxes. However, the amount added under this paragraph shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this paragraph and by any expenses incurred in the production of interest or dividend income described in this paragraph.

(c) The amount of any federal estate taxes allocable to income in respect of a decedent not taxable by Oregon.

(d) The amount of any allowance for depletion in excess of the taxpayer's adjusted basis in the property depleted, deducted on the taxpayer's federal income tax return for the taxable year, pursuant to sections 613, 613A, 614, 616 and 617 of the Internal Revenue Code.

(e) For taxable years beginning on or after January 1, 1985, the dollar amount deducted under section 151 of the Internal Revenue Code for personal exemptions for the taxable year.

(f) The amount taken as a deduction on the taxpayer's federal return for unused qualified business

credits under section 196 of the Internal Revenue Code.

(g) The amount of any increased benefits paid to a taxpayer under chapter 569, Oregon Laws 1995, under the provisions of chapter 796, Oregon Laws 1991, and under section 26, chapter 815, Oregon Laws 1991, that is not includable in the taxpayer's federal taxable income under the Internal Revenue Code.

(h) The amount of any long term care insurance premiums paid or incurred by the taxpayer during the tax year if:

(A) The amount is taken into account as a deduction on the taxpayer's federal return for the tax year; and

(B) The taxpayer claims the credit allowed under ORS 315.610 for the tax year.

(i) Any amount taken as a deduction under section 1341 of the Internal Revenue Code in computing federal taxable income for the tax year, if the taxpayer has claimed a credit for claim of right income repayment adjustment under ORS 315.068.

(j) If the taxpayer makes a nonqualified withdrawal, as defined in ORS 348.841, from a college savings network account established under ORS 348.841 to 348.873, the amount of the withdrawal that is attributable to contributions that were subtracted from federal taxable income under ORS 316.699.

(3) Discount and gain or loss on retirement or disposition of obligations described under subsection (2)(a) of this section issued on or after January 1, 1985, shall be treated for purposes of this chapter in the same manner as under sections 1271 to 1283 and other pertinent sections of the Internal Revenue Code as if the obligations, although issued by a foreign state or a political subdivision of a foreign state, were not tax exempt under the Internal Revenue Code.

SECTION 75. ORS 475.525 is amended to read:

475.525 Sale of drug paraphernalia prohibited; definition of drug paraphernalia; exceptions.

(1) It is unlawful for any person to sell or deliver, possess with intent to sell or deliver or manufacture with intent to sell or deliver drug paraphernalia, knowing that it will be used to unlawfully plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance as defined by ORS 475.005.

(2) For the purposes of this section, "drug paraphernalia" means all equipment, products and materials of any kind which are marketed for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of ORS 475.840 to 475.980. Drug paraphernalia includes, but is not limited to:

(a) Kits marketed for use or designed for use in unlawfully planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(b) Kits marketed for use or designed for use in manufacturing, compounding, converting, producing,

processing or preparing controlled substances;

(c) Isomerization devices marketed for use or designed for use in increasing the potency of any species of plant which is a controlled substance;

(d) Testing equipment marketed for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(e) Scales and balances marketed for use or designed for use in weighing or measuring controlled substances;

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, marketed for use or designed for use in cutting controlled substances;

(g) Separation gins and sifters marketed for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;

(h) Containers and other objects marketed for use or designed for use in storing or concealing controlled substances; and

(i) Objects marketed for use or designed specifically for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

(A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens or hashish heads;

(B) Water pipes;

(C) Carburetion tubes and devices;

(D) Smoking and carburetion masks;

(E) Roach clips, meaning objects used to hold burning material that has become too small or too short to be held in the hand, such as a marijuana cigarette;

(F) Miniature cocaine spoons and cocaine vials;

(G) Chamber pipes;

(H) Carburetor pipes;

(I) Electric pipes;

(J) Air-driven pipes;

(K) Chillums;

(L) Bongs;

(M) Ice pipes or chillers; and

(N) Lighting equipment specifically designed for the growing of controlled substances.

(3) Drug paraphernalia does not include hypodermic syringes or needles.

(4) For the purposes of this section, "marijuana paraphernalia" means all equipment, products and materials of any kind which are marketed for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body marijuana in violation of ORS 475.840 to 475.980.

[(4)] (5) In determining whether an object is drug paraphernalia or marijuana paraphernalia, a trier of fact should consider, in addition to all other relevant factors, the following:

- (a) Instructions, oral or written, provided with the object concerning its use;
- (b) Descriptive materials accompanying the object which explain or depict its use;
- (c) National and local advertising concerning its use;
- (d) The manner in which the object is displayed for sale;
- (e) The existence and scope of legitimate uses for the object in the community; and
- (f) Any expert testimony which may be introduced concerning its use.

[(5)] (6) The provisions of ORS 475.525 to 475.565 do not apply to persons registered under the provisions of ORS 475.125 or to persons specified as exempt from registration under the provisions of that statute.

(7) The provisions of ORS 475.525 to 475.565 do not apply to a person who sells or delivers marijuana paraphernalia to a person 21 years of age or older.

SECTION 76. ORS 475.752, as amended by section 3, chapter 591, Oregon Laws 2013, is amended to read:

475.752 Prohibited acts generally; penalties; affirmative defense for certain peyote uses; causing death by Schedule IV substance. (1) Except for licensees and licensee representatives as defined in subsections (10) and (11) of section 5 of this Act, and except for a person acting within the scope of and in compliance with subsection (1) of section 6 of this Act, and except as authorized by ORS 475.005 to 475.285 and 475.752 to 475.980, it is unlawful for any person to manufacture or deliver a controlled substance. Any person who violates this subsection with respect to:

(a) A controlled substance in Schedule I, is guilty of a Class A felony, except as otherwise provided in ORS 475.886 and 475.890.

(b) A controlled substance in Schedule II, is guilty of a Class B felony, except as otherwise provided in ORS 475.858, 475.860, 475.862, 475.878, 475.880, 475.882, 475.904 and 475.906.

(c) A controlled substance in Schedule III, is guilty of a Class C felony, except as otherwise provided in ORS 475.904 and 475.906.

(d) A controlled substance in Schedule IV, is guilty of a Class B misdemeanor.

(e) A controlled substance in Schedule V, is guilty of a Class C misdemeanor.

(2) Except as authorized in ORS 475.005 to 475.285 and 475.752 to 475.980, it is unlawful for any person to create or deliver a counterfeit substance. Any person who violates this subsection with respect to:

(a) A counterfeit substance in Schedule I, is guilty of a Class A felony.

(b) A counterfeit substance in Schedule II, is guilty of a Class B felony.

(c) A counterfeit substance in Schedule III, is guilty of a Class C felony.

(d) A counterfeit substance in Schedule IV, is guilty of a Class B misdemeanor.

(e) A counterfeit substance in Schedule V, is guilty of a Class C misdemeanor.

(3) It is unlawful for any person knowingly or intentionally to possess a controlled substance, **other than marijuana**, unless the substance was obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of professional practice, or except as otherwise authorized by ORS 475.005 to 475.285 and 475.752 to 475.980. Any person who violates this subsection with respect to:

(a) A controlled substance in Schedule I, is guilty of a Class B felony, except as otherwise provided in ORS 475.894.

(b) A controlled substance in Schedule II, is guilty of a Class C felony, except as otherwise provided in ORS 475.864.

(c) A controlled substance in Schedule III, is guilty of a Class A misdemeanor.

(d) A controlled substance in Schedule IV, is guilty of a Class C misdemeanor.

(e) A controlled substance in Schedule V, is guilty of a violation.

(4) In any prosecution under this section for manufacture, possession or delivery of that plant of the genus *Lophophora* commonly known as peyote, it is an affirmative defense that the peyote is being used or is intended for use:

(a) In connection with the good faith practice of a religious belief;

(b) As directly associated with a religious practice; and

(c) In a manner that is not dangerous to the health of the user or others who are in the proximity of the user.

(5) The affirmative defense created in subsection (4) of this section is not available to any person who has possessed or delivered the peyote while incarcerated in a correctional facility in this state.

(6)(a) Notwithstanding subsection (1) of this section, a person who unlawfully manufactures or delivers a controlled substance in Schedule IV and who thereby causes death to another person is guilty of a Class C felony.

(b) For purposes of this subsection, causation is established when the controlled substance plays a substantial role in the death of the other person.

SECTION 77. ORS 475.856, as amended by section 1, chapter 591, Oregon Laws 2013, is amended to read:

475.856 Unlawful manufacture of marijuana. (1) [It] Except for licensees and licensee representatives as defined in subsections (10) and (11) of section 5 of this Act, and except for a person acting within the scope of and in compliance with subsection (1) of section 6 of this Act, it is unlawful for any person to manufacture marijuana.

(2) Unlawful manufacture of marijuana is a Class B felony.

(3) Notwithstanding subsection (2) of this section, unlawful manufacture of marijuana is a Class B misdemeanor, if a person 21 years of age or older manufactures homegrown marijuana at a household and the total number of homegrown marijuana plants at the household exceeds four marijuana plants but does not exceed eight marijuana plants.

(4) As used in subsection (3) of this section, the terms "homegrown" and "household" have the meanings given to them in section 5 of this Act.

SECTION 78. ORS 475.860 is amended to read:

475.860 Unlawful delivery of marijuana. (1) [It] Except for licensees and licensee representatives as defined in subsections (10) and (11) of section 5 of this Act, and except for a person acting within the scope of and in compliance with subsection (1) of section 6 of this Act, it is unlawful for any person to deliver marijuana.

(2) Unlawful delivery of marijuana is a:

(a) Class B felony if the delivery is for consideration.

(b) Class C felony if the delivery is for no consideration.

(3) Notwithstanding subsection (3) of this section, unlawful delivery of marijuana is a:

(a) Class A misdemeanor, if the delivery is for no consideration and consists of less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae; or

(b) Violation, if the delivery is for no consideration and consists of less than five grams of the dried leaves, stems and flowers of the plant Cannabis family Moraceae. A violation under this paragraph is a specific fine violation. The presumptive fine for a violation under this paragraph is \$650.

(4) Notwithstanding subsections (2) and (3) of this section, unlawful delivery of marijuana is a:

(a) Class A felony, if the delivery is to a person under 18 years of age and the defendant is at least 18 years of age and is at least three years older than the person to whom the marijuana is delivered; or

(b) Class C misdemeanor, if the delivery:

(A) Is for no consideration;

(B) Consists of less than five grams of the dried leaves, stems and flowers of the plant Cannabis family Moraceae;

(C) Takes place in a public place, as defined in ORS 161.015, that is within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors; and

(D) Is to a person who is 18 years of age or older.

SECTION 79. ORS 475.864, as amended by section 2, chapter 591, Oregon Laws 2013, is amended to read:

475.864 Unlawful possession of marijuana. (1) As used in subsections (2) to (4) of this section:

(a) "Marijuana" means the leaves, stems, and flowers of the plant Cannabis family Moraceae.

(b) "Marijuana product" has the meaning given the term "marijuana" in ORS 475.005 (16), but does not include the leaves, stems and flowers of the plant Cannabis family Moraceae.

(2) It is unlawful for any person **under 21 years of age** knowingly or intentionally to possess marijuana or marijuana product.

(3)(a) Unlawful possession of four avoirdupois ounces or more of marijuana **by a person under 21 years of age** is a Class C felony.

(b) Unlawful possession of one avoirdupois ounce of marijuana or more, but less than four avoirdupois ounces, **by a person under 21 years of age** is a Class B misdemeanor.

(c) Unlawful possession of less than one avoirdupois ounce of marijuana **by a person under 21 years of age** is a specific fine violation. The presumptive fine for a violation under this paragraph is \$650.

(4)(a) Unlawful possession of one-quarter avoirdupois ounce or more of marijuana product **by a person under 21 years of age** is a Class C felony.

(b) Unlawful possession of less than one-quarter avoirdupois ounce of marijuana product **by a person**

under 21 years of age is a Class B misdemeanor.

(5) As used in subsections (6) to (8) of this section, the terms "licensee," "licensee representative," "marijuana," "marijuana extracts," "marijuana products," "marijuana retailer," "public place," and "usable marijuana" have the meanings given to them in section 5 of this Act.

(6) Except for licensees and licensee representatives, it is unlawful for any person 21 years of age or older knowingly or intentionally to possess:

- (a) More than one ounce of usable marijuana in a public place.
- (b) More than eight ounces of usable marijuana.
- (c) More than sixteen ounces of marijuana products in solid form.
- (d) More than seventy-two ounces of marijuana products in liquid form.
- (e) More than one ounce of marijuana extracts.
- (f) Any marijuana extracts that were not purchased from a licensed marijuana retailer.

(7) A violation of paragraphs (a) to (e) of subsection (6) of this section is a:

- (a) Class C felony, if the amount possessed is more than four times the applicable maximum amount specified in subsection (6) of this section;
- (b) Class B misdemeanor, if the amount possessed is more than two times, but not more than four times, the applicable maximum amount specified in subsection (6) of this section; or
- (c) Class B violation, if the amount possessed is not more than two times the applicable maximum amount specified in subsection (6) of this section.

(8) A violation of paragraph (f) of subsection (6) of this section is a:

- (a) Class C felony, if the amount possessed is more than one-quarter ounce of such marijuana extracts; or
- (b) Class B misdemeanor, if the amount possessed is not more than one-quarter ounce of such marijuana extracts.

SECTION 80. ORS 571.315 is amended to read:

571.315 Revocation or refusal of license or permit; civil penalty. (1) In addition to any other liability or penalty provided by Oregon law, the State Department of Agriculture may revoke or refuse to issue or renew an industrial hemp license or an agricultural hemp seed production permit and may impose a civil penalty for violation of:

- (a) A license or permit requirement;

(b) License or permit terms or conditions;

(c) Department rules relating to growing or handling industrial hemp; or

(d) A final order of the department that is specifically directed to the grower's or handler's industrial hemp operations or activities.

(2) The department may not impose a civil penalty under this section that exceeds \$2,500. The department shall impose civil penalties under this section in the manner provided by ORS 183.745.

(3) The department may revoke or refuse to issue or renew an industrial hemp license or an agricultural hemp seed production permit for violation of any rule of the department that pertains to agricultural operations or activities other than industrial hemp growing or handling.

(4) A revocation of, or a refusal to issue or renew, an industrial hemp license or an agricultural hemp seed production permit is subject to ORS chapter 183.

(5) The department may not revoke or refuse to issue or renew an industrial hemp license or an agricultural hemp seed production permit on the basis that industrial hemp production or possession, or commerce in industrial hemp commodities or products, is prohibited by federal law.

SECTION 81. Sections 71 to 73 of this Act and the amendments to ORS 316.680, 475.525, 475.752, 475.856, 475.860, 475.864, and 571.315 by sections 74 to 80 of this Act apply to conduct occurring on and after the operative date specified in subsection (1) of section 82 of this Act.

SECTION 82. (1) Sections 3 to 73 of this Act and the amendments to ORS 316.680, 475.525, 475.752, 475.856, 475.860, 475.864, and 571.315 by sections 74 to 80 of this Act become operative on July 1, 2015.

(2) The Oregon Liquor Control Commission may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the commission to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the commission by sections 3 to 73 of this Act and the amendments to ORS 316.680, 475.525, 475.752, 475.856, 475.860, 475.864, and 571.315 by sections 74 to 80 of this Act.

SECTION 83. The section captions used in this Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this Act.

SECTION 84. This Act becomes effective 30 days after the day on which it is approved by a majority of the votes cast on it.

SECTION 85. If an initiative petition that conflicts with this Act is placed on the ballot at the next regular general election held throughout this state on November 4, 2014, and if both this Act and the conflicting initiative petition are approved by a majority of the votes cast thereon, the

conflicting initiative petition is repealed in its entirety if this Act receives a number of affirmative votes greater than the number of affirmative votes received by the conflicting initiative petition.

SECTION 86. If any sections, subsections, paragraphs, phrases, or words of this Act (including but not limited to the entirety of sections 7 to 70 of this Act) shall be held unconstitutional, void, or illegal, either on their face or as applied, this shall not affect the applicability, constitutionality, or legality of any other sections, subsections, paragraphs, phrases, and words of this Act. To that end, the sections, subsections, paragraphs, phrases, and words of this Act are intended to be severable. It is hereby declared to be the intent of this Act that this Act would have been adopted had such unconstitutional, void, or illegal sections, subsections, paragraphs, phrases, or words, if any, not been included in this Act.

RECEIVED

2013 OCT 24 PM 3 04

KATE BROWN
SECRETARY OF THE STATE

ELLEN F. ROSENBLUM
Attorney General



MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
APPELLATE DIVISION

November 27, 2013

Jim Williams
Director, Elections Division
Office of the Secretary of State
141 State Capitol
Salem, OR 97310

Re: Proposed Initiative Petition — Allows Possession, Manufacture, Sale of Marijuana by
and to Adults, Under State Licensing, Regulation, Taxation
DOJ File #BT-37-13; Elections Division #37

Dear Mr. Williams:

We have prepared and hereby provide to you a draft ballot title for the above-referenced prospective initiative petition. The proposed measure relates to allowing possession, manufacture, sale of marijuana by and to adults, under state licensing, regulation, and taxation.

Written comments from the public are due to you within ten business days after your receipt of this draft title. A copy of all written comments provided to you should be forwarded to this office immediately thereafter.

A copy of the draft ballot title is enclosed.

Sincerely,

Cameron Craft
Legal Secretary

chc/4816932

Enclosure

Anthony Johnson
5704 N. Missouri Ave
Portland, OR 97217

RECEIVED
2013 NOV 27 PM 11 46
KATE BROWN
SECRETARY OF THE STATE

DRAFT BALLOT TITLE

**Allows possession, manufacture, sale of marijuana by and to adults, under state
licensing, regulation, taxation**

Result of "Yes" Vote: "Yes" vote allows possession, authorizes in-state manufacture, processing, sale of marijuana by/to adults; licensing, regulation, taxation by state agencies, exempting "homegrown marijuana" (defined).

Result of "No" Vote: "No" vote retains laws prohibiting possession, manufacture, and delivery of marijuana, except regulated production, possession, and use as permitted under the Oregon Medical Marijuana Act.

Summary: Currently, cultivation, possession, delivery, sale of marijuana are unlawful, excepting regulated production, possession, use of medical marijuana. Measure allows production, processing, delivery, possession, sale of marijuana to adults, licensed, regulated by Oregon Liquor Control Commission (OLCC). Marijuana producer, processor, wholesaler may deliver "marijuana items" (defined) only to/on licensed retail premises. OLCC collects tax imposed on marijuana producer at different rates for marijuana flowers, leaves, immature plant. "Homegrown marijuana" (defined) not regulated, taxed. Tax revenues, fees fund OLCC suspense account, Oregon Marijuana Account distributed: 40% to Common School Fund; 20% for mental health/alcohol/drug services; 15% for state police; 20% for local law enforcement; 5% to Oregon Health Authority. "Marijuana paraphernalia" (defined) excluded from "drug paraphernalia" laws. Other provisions.

RECEIVED
2013 NOV 27 AM 11 46
KATE BROWN
SECRETARY OF THE STATE

THE McNICHOLS LAW OFFICE P.C.

A Professional Corporation

181 N. GRANT STREET, SUITE 206A
CANBY, OREGON 97013-3695

TELEPHONE: (503) 266-8687
FACSIMILE (503) 266-8689
EMAIL: McNICHOLS.LAW@GMAIL.COM

December 12, 2013

By Facsimile and
First Class Mail

The Honorable Kate Brown
Oregon Secretary of State
Attn: Elections Division
255 Capitol Street NE, Suite 501
Salem, Oregon 97310

RECEIVED
2013 DEC 12 PM 4 54
KATE BROWN
SECRETARY OF THE STATE

RE: Elector Comments Submitted in Response to Draft Ballot Title
for Proposed Initiative Petition #37 (2014) (herein "Petition #37")

Secretary Brown:

I offer these comments on behalf of myself, an Oregon Elector, as the term "elector" is defined in ORS 250.005(2).

These comments are offered in response to the Secretary of State's request for comments in response to the Draft Ballot Title prepared by the Oregon Attorney General for Petition #37 as well as the Secretary of State's request for comments on whether Petition #7 complies with the procedural requirements of the Oregon Constitution.

We have reviewed the draft ballot title prepared by the Oregon Attorney General for Petition #37 and we are of the opinion the draft ballot title fails to comply with the requirements of ORS 250.035. Accordingly, we offer the following comments in response to your request for comments on the draft ballot title for Petition #37.

I. The Caption

ORS 250.035(2)(a) requires that a ballot title contain a "caption of not more than fifteen words which reasonably identify the subject matter of the state measure." The caption presented by the Attorney General states:

ALLOWS POSSESSION, MANUFACTURE, SALE OF MARIJUANA BY AND TO ADULTS,
UNDER STATE LICENSING, REGULATION, TAXATION

ORS 250.035(2)(a) directs that the caption of a ballot title to a proposed measure reasonably identify the subject matter of the measure.

The caption serves as the "cornerstone for the other portions of the ballot title" and therefore must identify the proposed measure's true subject matter "accurately and in terms that will not confuse or mislead potential petition signers and voters." *Greene v. Kulongoski*, 322 Ore. 169, 174-75, 903 P.2d 366 (1995).

The caption, which is the first information that most potential petition signers and voters will see, is pivotal. *Frazzini v. Myers*, 344 Or. 648, 654, 189 P.2d 1227 (2008). It must "inform

THE McNICHOLS LAW OFFICE P.C.
A Professional Corporation

The Honorable Kate Brown
Oregon Secretary of State
December 12, 2013
Page 2

potential petition signers and voters of the sweep of the measure." *Id.* citing *Terhune v. Myers*, 342 Ore. 475, 479, 154 P.Jd 1284 (2007). A caption should not "understate or overstate the scope of the legal changes that the proposed measure would enact." *Id.* citing *KainiWaller v. Myers*, 337 Ore. 36, 40, 93 P.Jd 62 (2004). What the Attorney General cannot do is select and identify in a caption only one out of multiple subjects and thus understate the scope of the proposed measure's subject matter. *Novick/Sager v. Myers*, 329 Ore. 11, 16, 986 P.2d 1 (1999).

In addition, where the measure's proponents use words or phrases that are intentionally or unintentionally designed to influence the voter, the Attorney General should look past those "politically charged" phrases and describe the full impact of the measure. The requirement that a ballot title be "impartial" is to prevent argument, misleading descriptions, or emotionally laden words within the ballot title. *Hamilton v. Myers*, 326 Or. 44, 943 P.2d 214 (1997).

Finally, a caption's terms must not understate or overstate the scope of the legal changes that the proposed measure would enact. *KainiWaller v. Myers*, 337 Or. 36, 93 P.2d 62 (2004). In order to draft a proper caption, the Attorney General must examine the text of the measure and the changes the measure would enact in the context of existing law. *Greenburg v. Myers*, 340 Or. 65, 127 P.2d 1192 (2006) citing *KainiWaller*, 337 Or. at 41 (emphasis added).

The draft caption fails to mention arguably the most important aspect of Petition #37.

The draft caption fails to inform the voter that Measure #37 will repeal all laws that currently make possession, manufacture and use of marijuana in Oregon illegal. This is the chief purpose of Petition #37. A caption must emphasize the "chief purpose" or "true subject matter" of a petition. *Burbridge v. Paulus*, 289 Or. 35, 609 P.2d 815 (1980); *Greene v. Kulongoaki*, *supra*.

Accordingly, I suggest the draft caption for the draft ballot title be re-written to read:

REPEALS LAWS MAKING POSSESSION, MANUFACTURING, SELLING MARIJUANA
ILLEGAL; NEW LAWS IMPOSING RESTRICTIONS, LICENSING, TAXATION.

(15 words)

II. Results Statements

The results statements fail for the same reasons as the draft caption, discussed above. The arguments contained in section I. of this letter are hereby incorporated as reasons why the draft results statements also fail to meet the basic statutory requirements of ORS 250.035(2).

ORS 250.035(2) requires the draft results statement be a simple and understandable statement of not more than 25 words that describes the result if the state measure is approved. As with the caption, the Results Statements cannot be inaccurate or misleading, and must accurately identify the subject matter of the measure. *Towers v. Myers*, 341 Or. 487, 145 P.3d 147 (2006). The "yes" result statement must explain to the voter what the results will be if the measure is

THE MCNICHOLS LAW OFFICE P.C.
A Professional Corporation

The Honorable Kate Brown
Oregon Secretary of State
December 12, 2013
Page 3

enacted. *Phillips v. Myers*, 325 Or. 221, 936 P.2d 964 (1997).

Further, when a caption is modified, the results statements should also be modified to conform to the changes made to the caption. *Phillips*, 325 Or. at 227.

First, the result of yes vote draft doesn't accurately elucidate the proposed law. The draft says, "'Yes' vote allows possession, authorizes in-state manufacture, processing, sale of marijuana by/to adults; licensing, regulation, taxation by state agencies, exempting 'homegrown marijuana' (defined)." The use of the terms, "state agencies" indicates that multiple agencies will regulate cannabis, when, in fact, the OLCC will be the regulating state entity. The term "liquor commission" should be used instead of "state agencies," since it is accurate and uses the same number of words.

Likewise, instead of using the phrase "... exempting 'homegrown marijuana' (defined)," the ballot question should, more accurately state: "...exempting limited 'homegrown marijuana.'"

First, the phrase "exempting homegrown marijuana" begs the question: exemption homegrown marijuana from what? From the provisions of Petition #37? From current law? What does this phrase mean? Literally, the words in the draft "Yes" results statement means that "homegrown marijuana" will continue to be a felony crime in Oregon.

Second, severe penalties are included in this proposal for adults and minors who exceed these limits, so the fact there are felonious limits therein imposed should be mentioned here, at the earliest opportunity.

Accordingly, I suggest the following "Yes" results statement:

Result of "Yes" Vote: "Yes" vote repeals existing marijuana laws; allows possession, Oregon manufacturing, processing, selling marijuana to adults; agency regulation; exempts limited "homegrown marijuana" (defined) from felony penalties.

III. Summary

The arguments contained in sections I. and II. of this letter are hereby incorporated into this section as additional arguments as to why the draft summary fails to meet the basic requirements of ORS 250.035. The draft summary should be modified to reflect the changes suggested in section I. and II of this letter.

The goal of the summary is to "help voters to understand what will happen if the measure is approved" and the "breadth of its impact." *Mabon v. Myers*, 332 Or. 633, 640, 33 P.3d 988 (2001), (Quoting *Fred Meyer, Inc. v. Roberts*, 308 Or. 169, 175, 777 P.2d 406 (1989))

The Attorney General's draft summary is misleading when it fails to mention that this proposal includes statutory language that imposes severe penalties, including felonies, on minors and adults for possessing and growing small amounts of marijuana.

THE McNICHOLS LAW OFFICE P.C.
A Professional Corporation

The Honorable Kate Brown
Oregon Secretary of State
December 12, 2013
Page 4

The following sentence from the draft's summary is inaccurate and misleading: "homegrown marijuana" (defined) not regulated/taxed." This draft's summary sentence does not inform electors, in fact, it misleads them. Electors are not told that this proposal includes felony penalties for minors and adults for simply possessing what it defines as too much, or growing what it defines as too much.

Finally, Petition #37 creates six brand new felonies in the state of Oregon. At a very minimum, the elector should be informed that Petition #37 could potentially expose the elector to new these new criminal penalties.

The draft summary needs to mention these penalties to meet Oregon's statutory requirements for ballot titles.

Very truly yours,

THE McNICHOLS LAW OFFICE P.C.

Michael D. McNichols

STOLL BERNE

STOLL STOLL BERNE LOKING & SHELCHTER P.C. LAWYERS

Steven C. Berman
sberman@stollberne.com

December 12, 2013

Kate Brown
Secretary of State
Elections Division
255 Capital Street NE, Suite 501
Salem, OR 97310RECEIVED
2013 DEC 12 PM 12:08
KATE BROWN
SECRETARY OF THE STATERe: Draft Ballot Title for Initiative Petition No. 37 for the General Election of November 4, 2014

Dear Secretary Brown:

I represent Anthony Johnson regarding the ballot title for Initiative Petition No. 37 for the general election of November 4, 2014 ("the Initiative"). Mr. Johnson is an elector in the State of Oregon and Chief Petitioner for the Initiative. This letter is written in response to your office's press release, dated November 27, 2013, which invites comments on the draft ballot title for the Initiative.

As is set forth below, Mr. Johnson respectfully submits that the caption, results statements and summary fail to comply with the requirements of ORS 250.035(2). Mr. Johnson's predominant objection is the use of the phrase "exempting 'homegrown marijuana' (defined)" in the result of yes statement, and similar language in the summary. The reference to a homegrown marijuana "exemption" is inaccurate, and potentially misleading. The provision in the Initiative allowing household production and possession of marijuana is quite limited in scope, and household production and possession are not "exempt" from regulation, licensing or taxation. Singling out (and mischaracterizing) section 6 of the Initiative, while disregarding other more significant aspects of the Initiative (such as the revenue collection and distribution provisions) is inappropriate. Moreover, in this election cycle, the Attorney General has been inconsistent with regards to mentioning provisions in marijuana related initiatives that allow for personal marijuana production and possession. The Attorney General's decision to mention the "homegrown marijuana" provision in the ballot title for the Initiative stands in stark contrast to the ballot title for Initiative Petition 22 (2014) ("IP 22"). IP 22 is much more permissive regarding personal production and possession of marijuana. However, the ballot title for IP 22 does not mention a "homegrown exemption." Mr. Johnson has additional concerns about the ballot title that are addressed throughout these comments.

Kate Brown
December 12, 2013
Page 2

I. An Overview of Initiative Petition 37

The Initiative is a restrained marijuana legalization and revenue generating measure. The Initiative would amend Oregon law to allow for limited production and sale of marijuana, by and to adults, under a strict state regulatory regime. The Initiative provides for adult possession and purchase of small amounts of marijuana. The Initiative modifies and retains criminal laws regarding the purchase or sale of marijuana and contains prohibitions regarding the possession or sale of marijuana by adults. *See, e.g.*, Initiative, §§45, 46, 47, 54, 55, 56, 57, 69, 77, 78, 79(6)-(8). Marijuana sale by or to minors is strictly prohibited. *See, e.g., id.* at §§47(2), 49, 52, 79(2)-(4). The Initiative prohibits using marijuana while driving, does not otherwise amend Oregon's driving under the influence laws, and mandates further research as to proper additional restrictions on driving under the influence of marijuana. Initiative, §§7(4), 73. Under the Initiative, cities and counties retain the option to regulate and prohibit marijuana sales within their jurisdictions. *Id.* at §§59, 60.

The Initiative establishes a detailed taxing framework for permitted commercial marijuana transactions, and requires that tax revenues be distributed to state and local governments. *See generally* Initiative, §§31-44 (so providing). A minimal amount of revenues generated from the tax, not to exceed \$250,000, will be used to pay administrative costs. *Id.* at §43. The remaining funds are distributed to state and local services. *Id.* at §44. Specifically, 40% of funds go to the Common School Fund; 20% go to a state fund for alcohol and drug addiction treatment (which, in turn, distributes funds to local governments); 15% go to the State Police Account; 10% go to cities for law enforcement; 10% go to the counties for law enforcement; and, 5% is distributed to the Oregon Health Authority for alcohol and drug treatment and prevention. *Id.* at §44(2)(a)-(f). Those funds are intended to be in addition to existing funding, and cannot supplant current funding from any source. *Id.* at §44(3).

The revenue generation and distribution system is a key aspect of the Initiative. Under the Initiative, marijuana production and sale would be regulated and taxed. The Initiative would generate substantial new revenue for state and local governments.

II. The Draft Ballot Title

A. The Caption

ORS 250.035(2)(a) provides that a ballot title must contain a "caption of not more than 15 words that reasonably identifies the subject matter of the state measure." The caption is the "cornerstone for the other portions of the ballot title," *Greene v. Kulongoski*, 322 Or 169, 175 (1995). As the "headline," the caption "provides the context for the reader's consideration of the other information in the ballot title." *Green*, 322 Or at 175. The caption must "state or describe the proposed measure's subject matter accurately, and in terms that will not confuse or mislead potential petition signers and voters." *Lavey v. Kroger*, 350 Or 559, 563 (2011) (citations omitted; internal quotation marks omitted). The "subject matter" of an initiative is its "actual major effect." *Lavey*, 350 Or at 563 (citation omitted; internal quotation marks omitted). The "actual major effect" is the change or changes "the proposed measure would enact in the context

Kate Brown
December 12, 2013
Page 3

of existing law." *Rasmussen v. Kroger*, 350 Or 281, 285 (2011). A caption that is underinclusive, because it fails to inform voters of all the major effects of an initiative, is statutorily noncompliant. *Towers v. Myers*, 341 Or 357, 362 (2006).

The caption in the draft ballot title provides:

Allows possession, manufacture, sale of marijuana by and to adults, under state licensing, regulation, taxation

Mr. Johnson respectfully submits that the caption is both misleading and underinclusive. First, as was set forth above, the Initiative allows for only *limited* possession, manufacture and sale of marijuana. For example, cities and counties may prohibit or restrict marijuana sales. Initiative, §§59, 60. Adult possession is restricted to delineated amounts of marijuana or marijuana products. *Id.* at §§6, 79(6). The amount of marijuana sold to a purchaser may be restricted. *Id.* at §15. The amount of marijuana produced, processed and transported may be regulated. *Id.* at §§7(2)(a), 18-23. However, the caption fails to set forth that the amounts of marijuana that an adult can possess are explicitly limited, and that the state retains the authority to further limit the amounts grown and sold. Voters and petition signers reviewing the draft caption would not know that the amount of marijuana an adult may purchase or possess under the Initiative explicitly is limited, or that sale and distribution may be further restricted. Those limitations are a major effect of the Initiative and would be of substantial concern to voters and petition signers. Mr. Johnson respectfully submits that those limitations reasonably can be conveyed to voters within the statutory word limits and without substantially changing other aspects of the caption.

Mr. Johnson also respectfully submits that the phrase "under state licensing, regulation, taxation" renders the caption underinclusive and potentially misleading. It is not clear whether "state licensing, regulation, taxation" modifies possession, manufacture, sale, or all three. Under the Initiative, production and sale are regulated and licensed. Adult possession is limited, and subject to state criminal laws, but it is not taxed. The regulated and licensed manufacture of marijuana is taxed upon initial sale by a licensed producer. Initiative, §33(3). Also, the draft caption does not make clear that marijuana transactions are taxed *only* at the state level. Initiative, §42.

Mr. Johnson suggests the following caption, which is consistent with the draft caption, but incorporates the concerns set forth above:

Allows limited adult marijuana possession, state regulated, licensed marijuana production, sale, subject to state taxation

Kate Brown
December 12, 2013
Page 4

B. The Results Statements

ORS 250.035(2)(b) and (c) require that a ballot title contain "simple and understandable statement[s] of not more than 25 words that describe[] the result if the state measure is" approved or rejected.

The results statements in the draft ballot title provide:

Result of "Yes" Vote: "Yes" vote allows possession, authorizes in-state manufacture, processing, sale of marijuana by/to adults; licensing, regulation, taxation by state agencies, exempting "homegrown marijuana" (defined).

Result of "No" Vote: "No" vote retains laws prohibiting possession, manufacture, and delivery of marijuana, except regulated production, possession and use as permitted under the Oregon Medical Marijuana Act.

Mr. Johnson respectfully submits that the result of yes statement is flawed, for the reasons set forth above. The result of yes statement fails to set forth that only limited quantities of marijuana may be possessed under the Initiative and that the quantities of marijuana produced and sold are subject to limitation. The result of yes statement also reiterates the lack of clarity in the caption as to what acts (possession, manufacture, and sale) are subject to state regulation and taxation.

Mr. Johnson further submits that the result of yes statement's selective focus on the inaccurately described "homegrown marijuana" "exempt[ion]" is improper. It is well-settled that "[w]hen the Attorney General chooses to describe the subject matter of a proposed measure by listing some of its effects, [s]he runs the risk that the [ballot title] will be underinclusive and thus inaccurate." *Towers*, 341 Or at 361. See also *Rooney v. Kulongoski*, 322 Or 77, 85 (1995) ("[w]hen a measure contains an affiliated grouping of separate provisions related by a common thread, the subject of the measure may well be most reasonably identified by characterizing the thread, rather than by focusing on one or more of the most significant constituent parts"). The Supreme Court consistently has referred results statements to Attorney General for modification that selectively highlight some effects of an initiative. See, e.g., *Brady v. Kroger*, 347 Or 518, 523-525 (2009) (referring for modification caption and results statements that selectively identify only some effects of proposed initiative); *Keisling v. Myers*, 343 Or 379, 385-386 (2007) (same); *Hunnicut v. Myers*, 342 Or 491, 495-497 (2007) (same); *Towers*, 341 Or at 361-362 (same). The Initiative is quite long. It runs over 30 pages, and contains 86 sections. The Attorney General's decision to emphasize one provision of the Initiative and not others is inconsistent with the statutory standards.

Equally problematic is the result of yes statement's failure to mention the tax and revenue distribution provisions of the Initiative. The Initiative is, in substantial part, a revenue raising measure. A significant portion of the initiative, fifteen sections, relate to taxation of marijuana and distribution of revenue from that taxation. Initiative at §§31-44, 71, 74. For revenue raising initiatives, the Supreme Court repeatedly has approved or required ballot titles that discuss the

Kate Brown
December 12, 2013
Page 5

source of the new revenues and how the revenues will be distributed. See, e.g., *McCormick v. Kroger*, 347 Or 293, 299 (2009) (ordering certification of result of yes statement on revenue raising measure that provided, in part, "provides funds currently budgeted for education, health care, public safety other services"); *Livingston v. Kroger*, 347 Or 307, 313 (2009) (same); *Straub v. Myers*, 340 Or 253, 259 (2006) (referring ballot title for modification to fully describe range of programs new tax would fund); *Aughenbaugh v. Roberts*, 309 Or 510, 519 (1990) (modifying ballot title to provide that increased alcohol taxes would fund certain programs). The revenue raising and distribution provisions of the Initiative would change Oregon law. While it is not possible to discuss that change to Oregon law in detail in the caption because of statutory word limits, that change should be included in the result of yes statement.

The phrase "exempting 'homegrown marijuana' (defined)" is misleading and inaccurate. "Homegrown" marijuana is not exempt from licensing, regulation or taxation if a household exceeds the limited quantities set forth in the Initiative. See Initiative, §6(1)(a)-(c) (setting limits). Sections 45 through 59 and 63 through 86 of the Initiative apply to homegrown marijuana and homemade marijuana products. See *id.* at §6(1) (so providing). Any person who violates those provisions would be subject to criminal prosecution, civil penalties and tax liability. Under the Initiative, homegrown marijuana is not "exempt" from licensing, regulation and taxation, and it is incorrect for the results statements to so provide.

The result of yes statement fails to convey the extremely restricted and limited scope of the non-commercial personal growth and possession provisions in section 6. The Initiative allows adults over 21 to grow and keep only a limited amount of "homegrown" or "homemade" marijuana at their "household." Initiative, §6(1). "Homegrown" and "homemade" explicitly are defined as "for noncommercial purposes." *Id.* at §§5(6), (7). Moreover, homegrown marijuana must be kept from public view and no person may make homemade marijuana extracts. *Id.* at §§56, 57. As written, a voter or potential petition signer reasonably could conclude that the Initiative allows the wholly unregulated production and sale of homegrown marijuana. Voters would be misled into believing that unlimited quantities of "homegrown marijuana" may be grown and sold, free from regulation or legal oversight. The result of yes statement is misleading in that regard, and should be revised.

The mention of "homegrown marijuana" at the end of the result of yes statement also is redundant. The results of the provisions of section 6 if the Initiative is passed already are adequately described by phrase "[y]es' vote allows possession, authorizes in-state manufacture, processing * * * of marijuana by/to adults." The subsequent (and flawed) mention of the household provisions of section 6 is repetitive.

The language "exempting 'homegrown marijuana' (defined)" is too vague to be informative to voters. A ballot title must set forth the actual changes an Initiative will make to existing law in sufficient detail to notify the electorate as to what is at issue. As the Supreme Court explained in *Girard v. Kroger*, 351 Or 389, 397 (2011) a ballot title "may describe accurately the major effect of a measure and still not comply with the requirements of the statute if the description is too vague and gives voters no clear picture of what is at stake." (Internal quotation marks omitted; citations omitted). See, e.g., *Rogers v. Myers*, 344 Or 219, 224-226,

Kate Brown
December 12, 2013
Page 6

230 (2008) (rejecting caption as "so broad that it fails to disclose the subject matter of the proposed measure in terms that give notice to the voters of the principal substantive choice or choices that the measure presents" and rejecting result of yes statement for same reason); *Hannicutt v. Meyers*, 343 Or 387, 391-393 (2007) (referring certified caption and results statements for modification, because they were "too vague"); *Terhune v. Myers*, 342 Or 475, 480 (2007) ("The Attorney General's caption blandly refers to a 'tax credit for educational expenses.' That may be accurate, but it hardly can be said to note, much less highlight, the actual major effect of the proposed measure."); *Terhune*, 342 Or at 480 (referring certified result of yes statement for modification "on the same ground"). The phrase "exempting 'homegrown marijuana' (defined)" does not adequately inform potential petition signers or voters of the actual scope or impact of the limited household provisions found in Section 6 of the Initiative. Voters would have no way of knowing what "exempting 'homegrown marijuana' (defined)" means. The language is uninformative, and should be removed.

"Homegrown marijuana" (defined) also is technically inaccurate. Both "homegrown" and "marijuana" are defined in the Initiative. Initiative, §§5(6), 5(12). However, the phrase "homegrown marijuana" is not defined. To the extent the Initiative contains a provision allowing personal noncommercial marijuana production and possession, section 6 more accurately would be described as applying to "households," rather than to "homegrown marijuana." Section 6 allows a household to produce or store a *limited* amount of homegrown marijuana or homemade marijuana products. See Initiative, §§6(1)(a)-(c) (so providing). Section 6 does allow for non-commercial delivery of a limited amount of homegrown marijuana or homemade marijuana products. Initiative, §§6(1)(d)-(f). However, that recipient still would be subject to the household possession limits found in §§6(1)(a)-(c). Accordingly, even if singling out the provisions of section 6 were appropriate (and it is not) "homegrown marijuana" does not adequately describe the household provisions of Section 6.

The quotation marks around "homegrown marijuana" and the parenthetical ("defined") also are improper. It is well-settled that using quotation marks in a ballot title "is not a desirable course." *Mabon v. Keisling*, 317 Or 406, 413 (1993). Use of quotation marks "runs the risk of creating a negative impression." *Mabon*, 317 Or at 413. "If we can avoid the use of quotation marks and still keep faith with our statutory task, we shall do so." *Id.* See also *Wolf v. Myers*, 343 Or 494, 502 (2008) ("merely using terms taken from the measure itself does not necessarily meet the statutory requirements for a ballot title, and the Attorney General is required to draft a ballot title that accurately describes the subject matter of the proposed measure, the result if the measure were to pass, and the major effect of the measure"). In this instance, "exempting 'homegrown marijuana' (defined)" could leave voters with the erroneous impression that "homegrown marijuana" is defined in the Initiative as something different than marijuana grown at a household for noncommercial purposes. The phrase "exempting 'homegrown marijuana' (defined)" fails to inform voters of the limited scope of Section 6.

The phrase "exempting 'homegrown marijuana'" in the result of yes statement would be confusing to voters for the additional reason that it draws a false contrast between the Initiative

Kate Brown
December 12, 2013
Page 7

and IP 22.¹ IP 22 is a different marijuana legalization initiative (with a different chief petitioner) that currently is being circulated. See, e.g., 2014 Monthly Submission Log² (establishing that signatures in support of IP 22 have been submitted to the Secretary of State). IP 22 is more permissive than the Initiative. IP 22 allows for substantial personal marijuana "cultivation" and possession, without any limitations on location of production. Compare IP 22 (Ex. A), §4 at proposed ORS 474.065(3) (providing that "[t]he cultivation and possession of up to 24 cannabis plants and 24 ounces for personal, noncommercial use by an adult shall not require a license nor registration") with Initiative, §6(1)(a) (limiting household marijuana production to four plants and eight ounces of marijuana); Initiative §56 (prohibiting homegrown marijuana in public view). In other words, the Initiative is much more restrictive than IP 22 regarding non-commercial personal production and possession of marijuana. No portion of the draft ballot title for IP 22 mentioned the personal production provision in IP 22.³ In his comments on the draft ballot title, the chief petitioner for IP 22 requested that the ballot title contain language providing that IP 22 allowed personal, unlicensed, marijuana production.⁴ The Attorney General rejected that request, and certified a ballot title for IP 22 that focuses on the commercial production and sale of marijuana, but does not mention that IP 22 allows for personal marijuana production.⁵ In the light of the fact that the Initiative is substantially more restrictive than IP 22 regarding household production and possession of marijuana, it is unreasonable for the result of yes statement for the ballot title for the Initiative to provide "exempting 'homegrown marijuana'" when the ballot title for IP 22 does not mention at all the personal production and possession provisions of IP 22. Voters and petition signers would be asked to make a comparison between two initiatives addressing marijuana without being given an accurate portrayal of the differences between the two initiatives.

For the reasons set forth above, "exempting 'homegrown marijuana' (defined)" should be deleted from the result of yes statement. That phrase is inaccurate, redundant, and emphasizes one aspect of the Initiative while disregarding other more significant aspects of the Initiative. Moreover, the result of yes statement should discuss the resulting revenue generation and distribution if the Initiative is approved. A result of yes statement that complies with the statutory requirements would provide:

"Yes" vote allows limited adult marijuana possession; allows regulated, licensed production and sale of marijuana, subject to taxes, with revenues to fund state, local services."

¹A copy of IP 22 is attached as Exhibit A.

²The Secretary of State's Monthly Submission Log is available at: http://sos.oregon.gov/elections/Documents/2014_%20Monthly_Submission_log.pdf.

³A copy of the draft ballot title for IP 22 is attached as Exhibit B.

⁴A copy of the comments filed by the chief petitioner for IP 22 on the draft ballot title for IP 22 is attached as Exhibit C.

⁵A copy of the Attorney General's letter regarding the certified ballot title for IP 22 is attached as Exhibit D. A copy of the certified ballot title for IP 22 is attached as Exhibit E.

Kate Brown
December 12, 2013
Page 8

Mr. Johnson submits that the result of no statement also should be revised. The second half of the result of no statement improperly focuses on Oregon's medical marijuana law. However, the result of no statement should not describe statutes or laws that will not be affected regardless of "whether the proposed measure passes or fails." *Nesbitt v. Myers*, 335 Or 219, 223 (2003). Otherwise, the description could mislead voters about the effect of their vote. Moreover, the result of no statement should parallel the result of yes statement, to the extent practicable. CRS 250.035(3). Oregon's medical marijuana law will not be affected by the Initiative. See Initiative, §§4(7), 5(2) (so providing). Accordingly, the lengthy discussion of the medical marijuana law in the result of no statement is misplaced.

The result of no vote also is confusing, and potentially misleading. The reference to medical marijuana laws is phrased as part of an exception to a negative statement: "except * * * as permitted under the Oregon Medical Marijuana Act." In other words, a voter could conclude that a "no" vote somehow would impact Oregon's medical marijuana laws, either by preserving them or undermining them. However, as was set forth above, neither a yes for nor a no vote has any resulting effect on Oregon's medical marijuana laws. The Initiative does not impact those laws in any way. The discussion of the medical marijuana laws in the result of no statement would leave voters with a contrary impression. The long discussion of the Oregon Medical Marijuana Act should be deleted from the result of no statement.

A result of no statement that complies with the statutory requirements would provide:

"No" vote retains existing criminal and civil laws prohibiting most sale, possession, manufacturing of non-medical marijuana; no additional revenues to fund state, local services."

C. The Summary

ORS 250.035(2)(d) requires that the ballot title contain a "concise and impartial statement of not more than 125 words summarizing the state measure and its major effect." The summary should be revised for the reasons set forth above and for the following additional reasons.

- The first sentence of the summary parallels the first sentence of the summary for the certified ballot title for IP 22. As was set forth above, IP 22 and the Initiative are different in myriad respects. IP 22 focuses extensively on marijuana "cultivation" and uses the word "cultivation" repeatedly, whereas cultivation is not a focal point of the Initiative. In order to avoid voter confusion and accurately describe the law affected by the Initiative, the word "cultivation" should not be included in the first sentence of the draft summary. "Production" is the word used in the Initiative. Initiative, §§5(27), 6(1), 19. "Production" is more appropriate than "cultivation."
- The sentence "'Homegrown marijuana' (defined) not regulated, taxed" is inaccurate and misleading for the reasons set forth above. Homegrown marijuana is regulated under the

Kate Brown
December 12, 2013
Page 9

Initiative. The household provisions of §6 are quite limited in scope, but the language used in the summary does not so inform voters.

- The third to last sentence, describing the revenue distribution framework, is disconnected from the discussion of the tax imposed. Voters will have a better understanding of the tax and distribution regime created by the Initiative if the language regarding distribution immediately follows the language regarding the tax. Moreover, the description of how distribution operates is flawed. Specifically, the phrase "[t]ax revenues, fees fund OLCC suspense account, Oregon Marijuana Account distributed" is inaccurate and misleading. Under the Initiative, the revenues generated by the taxes imposed on marijuana transactions initially are placed into a suspense account, but then transferred to the Oregon Marijuana Account. Initiative, §43. However, from the description in the summary, a voter would be led to believe that the suspense account and the Oregon Marijuana Account are the same thing. Moreover, the phrase is unnecessarily convoluted and would be confusing to voters. The mechanism of how funds are handled is of minimal importance to voters, whereas the distribution of funds is of great importance. The phrase would be statutorily compliant if rewritten as: "[t]ax revenues, fees cover administrative costs, then distributed," and was then followed by the existing description of how funds are allocated.
- The summary should mention the local option aspect of the Initiative. The Initiative provides that local governments may prohibit or regulate retail marijuana establishments within their boundaries. Initiative, §§59, 60. That would be important to voters, because voters would want to know that they retain authority over whether marijuana can be sold in their local jurisdiction.

Thank you for your consideration of these comments. Please notify me immediately when a certified ballot title is issued.

Very truly yours,

✓Steven C. Berman

SCB:jj
cc: client

Oregon Cannabis Tax Act of 2014

Whereas the people of the State of Oregon find that cannabis does not cause the social ills that its prohibition was intended to guard against; rather, that most of the social ills attributed to cannabis result from its unreasonable prohibition which:

- (a) Provides incentives to traffic in marijuana instead of limiting its prevalence, since almost all cannabis users evade the prohibition, even though drastically expanding public safety budgets have reduced funding for other vital services such as education;
- (b) Fosters a black market that exploits children, provides an economic subsidy for gangs, and sells cannabis of questionable purity and uncertain potency;
- (c) Generates enormous, untaxed, illicit profits that debase our economy and corrupt our justice system; and,
- (d) Wastes police resources, clogs our courts, and drains the public budget to no good effect; and,

Whereas, the people recall that alcohol prohibition had caused many of the same social ills before being replaced by regulatory laws which, ever since, have granted alcohol users the privilege of buying alcohol from state licensees, imposed strict penalties protecting children, delivered alcohol of sure potency, and generated substantial public revenues; and,

Whereas the people hold that cannabis prohibition is a sumptuary law of a nature repugnant to our constitution's framers and which is so unreasonable as to:

- (a) Arbitrarily violate the rights of cannabis users to be secure against unreasonable search and seizure as guaranteed to them by Article 1, Section 9 of the Oregon Constitution;
- (b) Unreasonably impose felony burdens on the cannabis users while the state grants special privileges to alcohol users, which violates Article 1, Section 20 of the Oregon Constitution;
- (c) Unnecessarily proscribo consumption of a "herb bearing seed" given to humanity in Genesis 1:29, thereby violating their unqualified religious rights under Article 1, Section 3 and their Natural

2013 JUN 6 PM 13
RECEIVED
STATE SECRETARY OF THE STATE

Rights under Article 1, Section 33 of the Oregon Constitution;

(d) Violates the individual's right to privacy and numerous other Natural and Constitutional Rights

reserved to the people under Article 1, Section 33 of the Oregon Constitution;

(e) Violates the state's right to regulate and tax commerce within the state, as reserved to states under the 10th Amendment of the U.S. Constitution, thereby abdicating control to illicit markets; and,

(f) Irrationally subvert the ends to which, in its Preamble, the Oregon Constitution was ordained and the purposes, in Article 1, Section 1, for which our government was instituted; now,

Therefore, the people find that the constitutional ends of justice, order, and the perpetuation of liberty; the governmental purposes of preserving the peace, safety, and happiness of the people; and the vitality of the other constitutional provisions cited above, demand the replacement of a costly, self-defeating prohibition with regulatory laws controlling cannabis cultivation, potency, sale, and use; defining and prohibiting cannabis abuse; protecting children with a comprehensive drug education program and strict penalties for the sale or provision of cannabis to minors; funding state drug abuse treatment programs; promoting Oregon hemp for fuel, fiber and food; and raising substantial revenue for public use.

Wherefore, be it enacted by the people of the state of Oregon, the laws relating to cannabis are revised as follows:

Section 1. This Act shall operate uniformly throughout Oregon and fully replace and supersede all statutes, municipal charter enactments, and local ordinances relating to cannabis, except those relating to operating a motor vehicle while intoxicated and the Oregon Medical Marijuana Act. This Act will lower the misuse of, illicit traffic in and harm associated with cannabis and will set up voluntary studies of cannabis users under ORS 474.045 (b) and other studies.

Section 2. A new state commission is hereby created and shall be named the Oregon Cannabis Commission, or the OCC. The OCC shall regulate the sale of cannabis and cultivation of cannabis for

sale. The OCC shall consist of seven commissioners, which shall be appointed by the Governor before December 31, 2014 for a term of one year and they shall promulgate administrative rules, create systems and begin accepting license applications by February 28, 2015, and begin issuing licenses by March 21, 2015.

Section 3. This Act, in Section 4, creates an ORS chapter 474 titled the "Oregon Cannabis Tax Act." Legislative Counsel shall move and renumber existing provisions of chapter 474.

Section 4. 474.005 Definitions. As used in this chapter:

(1) "Abuse" means repetitive or excessive drug use such that the individual fails to fulfill a statutory or common law duty, including but not limited to the duties owed by parents to children, by motorists to pedestrians and other motorists, and by employees to employers, fellow employees, and the public.

(2) "Cannabis" means the flowering tops and all parts, derivatives, or preparations of the cannabis plant, also known as "marijuana," containing cannabinoids in concentrations established by the commission to be psychoactive, but does not include "hemp" as defined by ORS 474.005(5).

(3) "Commission" means the Oregon Cannabis Commission, or OCC.

(4) "Cultivation" means growing the cannabis plant.

(5) "Hemp" means the seeds, stems, and stalks of the cannabis plant, and all other parts, products, and byproducts of the cannabis plant not containing cannabinoids in concentrations established by the commission to be psychoactive. Seeds and stalks of all varieties of cannabis shall be considered hemp.

474.015 Short Title. This chapter may be cited as the "Oregon Cannabis Tax Act."

474.025 Purpose of the Oregon Cannabis Tax Act. This chapter shall be liberally construed so as to minimize the misuse and abuse of cannabis; to prevent the illicit sale or provision of cannabis to minors; and to protect the peace, safety, and happiness of Oregonians while preserving the largest measure of liberty consistent with the above purposes.

474.035 Powers and duties of the commission, licenses for cultivation and processing. Hemp fiber,

protein, oil not regulated.

(1) The commission shall have the powers necessary to carry out the provisions of this chapter. It shall make such rules and regulations as will discourage and minimize the diversion of cannabis to illicit sale or use within the state, the illicit importation and sale of cannabis cultivated or processed outside the state, and the illicit export or removal of cannabis from the state. The commission's jurisdiction shall extend to any person licensed under this chapter to cultivate, process or sell cannabis, but shall not extend to any person who manufactures products from hemp. Hemp production for fiber, protein and oil shall be allowed without regulation, license nor fee. No federal license shall be required to cultivate hemp in Oregon.

(2) The commission shall issue to any qualified applicant a license to cultivate cannabis for sale. The license shall specify the areas, plots, and extent of lands to be cultivated. The commission shall equitably apportion the purchase of cannabis among all licensees. The commission shall license cannabis products of the quality and grade set by market demand.

(3) The commission shall issue licenses to process cannabis to qualified applicants who submit successful bids. Licensed processors shall, as specified by the commission, contract, cure, extract, refine, mix, and package the entire cannabis crop and deliver it to OCC contractors' stores, but not later than four months after harvest.

474.045 Commission to license cannabis sale at cost for medical purposes. The Commission shall license cannabis sale at cost, including OCC expenses:

- (a) To Oregon and other states' pharmacies and OCC contractors' stores for use under a physician's order for glaucoma, nausea related to chemotherapy, AIDS, or any other condition for which a physician finds cannabis to be an effective treatment; and,
- (b) To recognized Oregon medical research facilities for use in research directed toward expanding

medical and sociological knowledge of the composition, effects, uses, and abuse of cannabis, to include studies of cannabis purchasers voluntarily participating through OCC stores under ORS 474.055.

474.055 Commission to set price and contract cannabis retailers. The commission shall sell cannabis through OCC contractors' stores and shall set the retail price of cannabis to generate profits for revenue to be applied to the purposes noted in ORS chapter 474 and to minimize incentives to purchase cannabis elsewhere or to purchase cannabis for resale or for removal to other states.

474.065 Qualifications of purchasers and licensees, effect of conviction.

(1) To be qualified to purchase, cultivate, or process cannabis, a person must be over 21 years of age and not have been convicted of sale of cannabis to minors or convicted under this chapter of unlicensed cultivation or sale of cannabis.

(2) Conviction for cultivation or sale of cannabis to other than minors, when committed prior to the effective date of this chapter, shall not be grounds for denial of an application for a license under this chapter.

(3) The cultivation and possession of up to 24 cannabis plants and 24 ounces for personal, noncommercial use by an adult shall not require a license nor registration.

474.075 Disposition of license fees and profits from sale of cannabis by state.

(1) The commission shall collect license fees which shall be calculated and continually appropriated to defray the commission's administrative costs of issuing licenses under this chapter and the Attorney General's costs of litigation in defense of the validity of this chapter's provisions and in defense of persons subjected to criminal or civil liability for actions licensed or required under this chapter.

(2) All money from the sale of cannabis shall be remitted to the State Treasurer for credit to a cannabis account, from which sufficient money shall be continually appropriated:

(a) To reimburse the commission for the costs of purchasing, processing, testing, grading, shipping, and selling cannabis; of regulating, inspecting, and auditing licensees; and of research studies

required by this chapter; and,

(b) To reimburse the Attorney General's office for costs of enforcing this chapter's criminal provisions.

(c) To reimburse OCC contractors for their expenses and labor with 15 percent of gross sales.

(3) All money remaining in the cannabis account after reimbursement of the related commission and Attorney General costs shall be profits which the State Treasurer shall distribute quarterly as follows:

(a) Ninety percent shall be credited to the state's general fund to finance state programs.

(b) Seven percent shall be credited to the Department of Human Resources and shall be continually appropriated to fund various drug abuse treatment programs on demand.

(c) One percent shall be credited to create and fund an agricultural state committee for the promotion of Oregon hemp fiber, protein and oil crops and associated industries. This new state committee shall be named the "Oregon Hemp Fiber and Food Committee."

(d) One percent shall be credited to create and fund an agricultural state committee to develop and promote biodiesel fuel production from hemp seeds. This new state committee shall be named the "Oregon Hemp Biodiesel Committee."

(e) One percent shall be distributed to the state's school districts, appropriated by enrollment, and shall be continually appropriated to fund a drug education program which shall:

(I) Emphasize a citizen's rights and duties under our social compact and to explain to students how drug abusers might injure the rights of others by failing to fulfill such duties;

(II) Persuade students to decline to consume psychoactive substances by providing them with accurate information about the threat these drugs pose to their mental and physical development; and,

(III) Persuade students that if, as adults, they choose to consume psychoactive substances, they must nevertheless responsibly fulfill all duties they owe others.

474.085 Commission to establish psychoactive concentrations of cannabinoids. The commission, based on findings made in consultation with medical experts and cannabis and hemp farmers to cannabinoid concentrations which produce psychoactivity, the economics of residual cannabis extraction, and strains of hemp that produce better quality and quantity of fiber, protein and oil, shall establish reasonable concentrations of cannabinoids deemed psychoactive under this chapter.

474.095 Commission to set standards, test purity, grade potency of cannabis, label contents.

(1) The commission shall set standards which the commission shall apply:

(a) To test and reject cannabis containing adulterants in concentrations known to harm people; and,

(b) To grade cannabis potency by measuring the concentrations of psychoactive cannabinoids it contains.

(2) The commission shall require processors and retailers to affix to cannabis packages a label which shall bear the state seal, a certification of purity, a grade of potency, the date of harvest, a warning as to the potential for abuse, and notice of laws prohibiting resale, removal from the state, public consumption, and provision and sale to minors.

474.105 Commission may limit purchases. The commission may limit the quantity of cannabis purchased by a person at one time or over any length of time and may refuse to sell cannabis to any person who violates this chapter's provisions or abuses cannabis within the meaning of ORS

474.005(1).

474.115 Unlicensed cultivation for sale, removal from the state, penalties. Cultivation for sale, removal from the state for sale, and sale of cannabis, without commission authority, shall be Class C felonies.

474.125 Sale or provision to minors, penalties, exception. The sale of cannabis to minors shall be a Class B felony, and gratuitous provision of cannabis to minors shall be a Class A misdemeanor, except when to a minor over 18 years of age under the same conditions provided by ORS 471.030(1) for

alcohol.

474.135 Fine as additional penalty. In addition to other penalties and in lieu of any civil remedy, conviction of sale or unlicensed cultivation for sale under ORS 474.115 or 474.125 shall be punishable by a fine which the court shall determine will deprive an offender of any profits from the criminal activity.

474.145 Acquisition by minors, penalty. Except as provided by ORS 474.125, the purchase, attempt to purchase, possession, or acquisition of cannabis by a person under 21 years of age shall be a violation punishable by a fine of not more than \$250.

474.155 Public consumption prohibited, penalty, exception. Except where prominent signs permit and minors are neither admitted nor employed, public consumption of cannabis shall be a violation punishable by a fine of not more than \$250.

474.205 Commission to study methods of use, potential for abuse, establish cannabis levels for presumption of impairment. The commission, in consultation with medical experts and by grants to accredited research facilities, shall:

- (a) Study methods of use and the potential for, and ill effects of, abuse of cannabis, the possible damage of throat and lungs from inhaling cannabis smoke, less harmful methods of administration, including but not limited to filtration of smoke and non-combustive vaporization of the psychoactive agents in cannabis, and shall report its findings in pamphlets distributed at OCC stores; and,
- (b) Study cannabis impairment and, if practicable, shall establish by rule levels of cannabinoids and impairment above which a person shall be presumed impaired.

474.215 Presumption of negligence. In civil cases, a rebuttable presumption of negligence shall arise upon clear and convincing evidence that a person is found to be impaired by cannabis at the time of an accident and if the person's actions materially contributed to the cause of injury.

474.305 Disclosure of names and addresses prohibited. Information on applicants, licensees, and

purchasers under this chapter shall not be disclosed except upon the person's request.

474.315 Attorney General's duties. The Attorney General shall vigorously defend this Act and any person prosecuted for acts licensed under this chapter, propose a federal and/or international act to remove impediments to this chapter, deliver the proposed federal and/or international act to each member of Congress and/or international organization, and urge adoption of the proposed federal and/or international act through all legal and appropriate means.

474.325 Effect. This Act shall take effect on November 11, 2014. Any section of this Act being held invalid as to any person or circumstance shall not affect the application of any other section of this Act that can be given full or partial effect without the invalid section or application. If any law or entity of any type whatsoever is held to impede this chapter's full effect, unimpeded provisions shall remain in effect and the impeded provisions shall regain effect upon the impediments removal.

DRAFT BALLOT TITLE

Supersedes existing laws governing cannabis (marijuana); creates commission to regulate cultivation, processing, sale of cannabis

Result of "Yes" Vote: "Yes" vote overrides most existing laws relating to cannabis, except medical marijuana; creates commission to regulate production, processing, sale of cannabis, contract with cannabis retailers.

Result of "No" Vote: "No" vote retains laws classifying cannabis as a controlled substance; prohibiting most sale, possession, manufacture of cannabis; permitting production, possession of cannabis for medical use.

Summary: Currently, cultivation, possession, sale of cannabis are unlawful, excepting regulated production, possession, use of medical marijuana. Measure supersedes state, local laws relating to cannabis (marijuana), except medical marijuana and driving under the influence laws. Prohibits regulation of "hemp" (defined). Creates commission to license cannabis cultivation, processing by qualified persons; commission sets price, purchases entire crop. Commission sells cannabis at cost to pharmacies, medical research facilities; for profit at set retail price to qualified adults. Licensed retailers receive 15 percent of gross sales. Proceeds fund commission, Attorney General's enforcement of measure's criminal provisions. Ninety percent of profit goes to state general fund, remainder as designated. Attorney General must "vigorously defend" measure, any person prosecuted for licensed activities, propose federal/international law consistent with measure. Other provisions,

RECEIVED
2013 JUL 22 PM 2 54
KATE BROWN
SECRETARY OF THE STATE

09/05/2013 16:16

THCF FAX

(FAX)5035172055

P.003/005

August 5, 2013

Douglas Paul Stanford
PO Box 86741
Portland, OR 97286

RECEIVED

2013 AUG 5 PM 4 57

KATE BROWN
SECRETARY OF THE STATE

Re: Initiative 22 draft ballot title

Dear Sir or Madam:

Please accept and consider my comments below in certifying the ballot title for Initiative 22.

This initiative is very similar to another proposal in the last election cycle, Initiative 9, which became Measure 80. Please use the following language, which was certified for 2012's Measure 80:

Allows personal marijuana, hemp cultivation/use without license; commission to regulate commercial marijuana cultivation/sale

Result of "Yes" Vote: "Yes" vote allows commercial marijuana (cannabis) cultivation/ sale to adults through state-licensed stores; allows unlicensed adult personal cultivation/use; prohibits restrictions on hemp (defined).

Result of "No" Vote: "No" vote retains existing civil and criminal laws prohibiting cultivation, possession and delivery of marijuana; retains current statutes that permit regulated medical use of marijuana.

Summary: Currently, marijuana cultivation, possession and delivery are prohibited; regulated medical marijuana use permitted. Measure replaces state, local marijuana laws except medical marijuana and driving under the influence laws; distinguishes "hemp" from "marijuana"; prohibits regulation of hemp. Creates commission to license marijuana cultivation by qualified persons and to purchase entire crop. Commission sells marijuana at cost to pharmacists, medical research facilities and to qualified adults for profit through state-licensed stores. Ninety percent of net proceeds goes to state general fund, remainder to drug education, treatment, hemp promotion. Bans sales to, possession by minors. Bans public consumption except where signs permit, minors barred. Commission regulates use, sets prices, other duties; Attorney General to defend against federal challenges/prosecutions. Provides penalties.

Other provisions.

Please certify this language for Initiative 22. Thank you.

Douglas Paul Stanford

ELLEN F. ROSENBLUM
Attorney General



MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
APPELLATE DIVISION

August 20, 2013

Gina Zejdlik
Acting Director, Elections Division
Office of the Secretary of State
141 State Capitol
Salem, OR 97310

RECEIVED
2013 AUG 20 PM 1 33
KATE BROWN
SECRETARY OF THE STATE

Re: Proposed Initiative Petition — Supersedes Existing Laws Governing Cannabis
(Marijuana); Creates Commission To Regulate Cultivation, Processing, Sale Of Cannabis
DOJ File #BT-22-13; Elections Division #22

Dear Ms. Zejdlik:

We have received the comments submitted in response to the draft ballot title for the prospective Initiative Petition #22 (2014). Comments were submitted by chief petitioner Douglas Paul Stanford. We provide the enclosed certified ballot title.

This letter summarizes the comments we received, our response to those comments, and the reasons we made or declined to make the changes proposed by the commenters. This letter must be included in the record in the event the Oregon Supreme Court is asked to review this ballot title. ORAP 11.30(7).

According to Mr. Stanford, the Attorney General should certify the entirety of the ballot title for IP #9 (2012).

A. The caption

The draft caption provides:

Supersedes existing laws governing cannabis (marijuana); creates commission to regulate cultivation, processing, sale of cannabis

Commenter Stanford proposes substituting the caption for IP #9 (2012), which provided:

Allows personal marijuana, hemp cultivation/use without license; commission to regulate commercial marijuana cultivation/sale

Mr. Stanford does not identify any deficiencies in the draft caption for IP #22 (2014). He simply prefers the caption above. We believe the draft caption is at least as helpful to voters. Therefore, we certify the draft caption without changes.

August 20, 2013
Page 2

B. The "Yes" and "No" result statements

Again, the commenter has no objection to the draft result statements. He suggests, however, that the Attorney General certify instead the result statements for IP #9 (2012), which provided:

Result of "Yes" Vote: "Yes" vote allows commercial marijuana (cannabis) cultivation/sale to adults through state-licensed stores; allows unlicensed adult personal cultivation/use; prohibits restrictions on hemp (defined).

Result of "No" Vote: "No" vote retains existing civil and criminal laws prohibiting cultivation, possession and delivery of marijuana; retains current statutes that permit regulated medical use of marijuana.

We believe the draft result statements are at least as informative as the result statements proposed by Mr. Stanford. Therefore, we certify the draft result statements without changes.

C. The summary

As above, commenter Stanford suggests substituting the summary for IP #9 (2012) for the draft summary. We do not accept that suggestion, because we believe the draft summary is at least as informative as the proposed substitute. Accordingly, we certify the draft summary without changes.

We certify the attached ballot title.

Judy C. Lucas
Senior Assistant Attorney General
judy.lucas@doj.state.or.us

JCL:chc/4527782

Enclosure

Douglas Paul Stanford
P.O. Box 86741
Portland, OR 97286

Certified by Attorney General on August 20, 2013.

BALLOT TITLE

Supersedes existing laws governing cannabis (marijuana); creates commission to regulate cultivation, processing, sale of cannabis

Result of "Yes" Vote: "Yes" vote overrides most existing laws relating to cannabis, except medical marijuana; creates commission to regulate production, processing, sale of cannabis, contract with cannabis retailers.

Result of "No" Vote: "No" vote retains laws classifying cannabis as a controlled substance; prohibiting most sale, possession, manufacture of cannabis; permitting production, possession of cannabis for medical use.

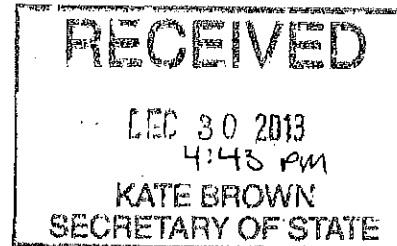
Summary: Currently, cultivation, possession, sale of cannabis are unlawful, excepting regulated production, possession, use of medical marijuana. Measure supersedes state, local laws relating to cannabis (marijuana), except medical marijuana and driving under the influence laws. Prohibits regulation of "hemp" (defined). Creates commission to license cannabis cultivation, processing by qualified persons; commission sets price, purchases entire crop. Commission sells cannabis at cost to pharmacies, medical research facilities; for profit at set retail price to qualified adults. Licensed retailers receive 15 percent of gross sales. Proceeds fund commission, Attorney General's enforcement of measure's criminal provisions. Ninety percent of profit goes to state general fund, remainder as designated. Attorney General must "vigorously defend" measure, any person prosecuted for licensed activities, propose federal/international law consistent with measure. Other provisions.

RECEIVED
2013 AUG 20 PM 1 37
KATE BROWN
SECRETARY OF THE STATE



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

December 30, 2014



Jim Williams
Director, Elections Division
Office of the Secretary of State
141 State Capitol
Salem, OR 97310

Re: Proposed Initiative Petition — Allows Possession, Manufacture, Sale Of
Marijuana By/ To Adults, Subject To State Licensing, Regulation, Taxation
DOJ File #BT-37-13; Elections Division #37

Dear Mr. Williams:

We have received the comments submitted in response to the draft ballot title for Initiative Petition # 37 (2014) ("IP # 37"). The comments were submitted by Steven C. Berman, on behalf of chief petitioner Anthony Johnson; and Michael D. McNichols. We provide the enclosed certified ballot title.

This letter summarizes the comments we received, our responses to those comments, and the reasons we made or declined to make the changes proposed by the commenters. This letter must be included in the record in the event the Oregon Supreme Court is asked to review this ballot title. ORAP 11.30(7).

A. The Draft Caption

The draft caption provides:

**Allows possession, manufacture, sale of marijuana by and to adults,
under state licensing, regulation, taxation**

Commenter Johnson

Commenter Johnson asserts that the draft caption is "underinclusive" and misleading, because it does not tell voters that the possession, manufacture, and sale of marijuana allowed under the measure are limited. Johnson asserts that the limitations are a major effect of the measure. We disagree on both points. First, by stating that the

possession, manufacture, and sale of marijuana are subject to “state licensing [and] regulation,” the draft caption alerts voters and potential petition signers that the ability to engage in those activities is not unlimited. The requirement of licensing and regulation by the state necessarily implies that the activities are subject to constraints.

Second, Johnson’s comment that the measure itself includes limitations that must be mentioned in the caption is not well taken. A caption is underinclusive if it mentions only some of the measure effects, such as, only one of several changes the measure would make. *Towers v. Myers*, 341 Or 357, 361, 142 P3d 1040 (2006). We disagree with Mr. Johnson’s characterization of the measure’s various internal limitations on marijuana possession, manufacture, and sale as “a major effect” of the measure. Rather, we view those provisions as additional information about the actual subject matter of the measure: permitting possession, manufacture, and sale of marijuana, subject to state licensing, regulation, and taxation.

Commenter Johnson also objects that the phrase “under state licensing, regulation, taxation” makes the draft caption “underinclusive and potentially misleading.” We fail to understand that claim. Assuming that the commenter’s objection is that the phrase gives too little information about the state licensing, regulation, and taxation of the permitted activities, we disagree. Additional information is appropriately provided to voters in the other sections of the ballot title.

Accordingly, we have made no changes to the draft caption based on Mr. Johnson’s comments.

Commenter McNichols

Commenter McNichols comments that “[t]he draft caption fails to mention arguably the most important aspect of Petition #37,” which he asserts is the repeal of “all laws that currently make possession, manufacture and use of marijuana in Oregon illegal.” We believe that description of the measure’s effect is inaccurate. In addition, we reject as imprecise his proposed phrase: “new laws imposing restrictions, licensing, taxation.” That proposed language fails to inform voters that the state is charged with regulating, licensing, and implementing taxation of the activities permitted by the measure. Therefore, we have not changed the draft caption in response to McNichols’s comments. We have, however, changed the summary to explain to voters that the measure supersedes some current marijuana-related laws.

On our own review, we have changed “under” to “subject to” and deleted the “and” between “by” and “to.”

B. The “Yes” and “No” Result Statements

The draft result statements provide:

Yes vote: “Yes” vote allows possession, authorizes in-state manufacture, processing, sale of marijuana by/to adults; licensing, regulation, taxation by state agencies, exempting “homegrown marijuana” (defined).

No vote: “No” vote retains laws prohibiting possession, manufacture, and delivery of marijuana, except regulated production, possession, and use as permitted under the Oregon Medical Marijuana Act.

Commenter Johnson

Commenter Johnson objects that the draft “yes” statement is flawed in the same respects as the draft caption. We reject that comment for the reasons already stated. In addition, he comments that the “yes” statement improperly focuses on the measure’s exemption for “homegrown marijuana” (a term he asserts is inaccurate). We agree with the commenter that the reference to “homegrown marijuana” should be omitted from the “yes” statement, but for a different reason: to allow reference to the measure’s effect on existing laws relating to cannabis.

Johnson asserts that voters will be confused by comparing the ballot title for another measure, IP # 22 (2014), with this ballot title. He comments that the proposed measure is more restrictive of personal, non-commercial use of marijuana than IP # 22, and yet the Attorney General’s ballot title for IP # 22 does not reference an exemption for personal, non-commercial marijuana use. We find the commenter’s equation of this measure with IP #22 to be inapt. We agree, however, that voters should be able to compare the ballot title for this measure with the ballot title for IP # 22, to avoid potential confusion. We have revised the draft ballot title accordingly.

Commenter Johnson also objects that the “yes” statement fails to mention the measure’s “tax and distribution provisions.” We disagree, because the “yes” statement plainly alerts voters that marijuana (other than homegrown marijuana) will be taxed. How the tax revenues will be distributed is a secondary result of passing the measure. That information is appropriately provided in the ballot title summary. The commenter’s reliance on *McCormick v. Kroger*, 347 Or 293, 300, 220 P3d 412 (2009), and *Livingston v. Kroger*, 347 Or 307, 220 P3d 418 (2009), is misplaced, because the petitioners in *McCormick* and *Livingston* did not object to the “yes” statement’s description of how the funds in question would be distributed. The Supreme Court did not require, or even address, that aspect of the “yes” statement in *McCormick* or *Livingston*.

The court's decision in *Straube v. Myers*, 240 Or 253, 259-260, 132 P3d 658 (2006), also does not support the commenter's objection. In *Straube*, the court expressly approved the caption's reference to the programs that the increased tax would fund. The court concluded, however, that the caption's (and the "yes" statement's) description of the proposed measure's purpose respecting health care as affecting *only* children's health was too limited. With regard specifically to the "yes" statement, the court wrote: "We conclude that the reference to only children's health insurance in the 'yes' vote result statement is misleading." *Straube*, 240 Or at 261. Thus, the deficiency in *Straube* was not the deficiency Johnson asserts here.

Finally, in *Aughenbaugh v. Roberts*, 309 Or 510, 789 P2d 656 (1990), the major effect of the proposed measure was an increase in taxes on beer and wine, an increase in the price of liquor, and "the dedication of most of those revenues to fund state and county chemical dependency programs." *Aughenbaugh*, 309 Or at 516. Petitioner did not challenge the summary's description of how the revenues would be distributed, and the court did not address that description. (At that time, ballot titles did not include result statements.) Thus, *Aughenbaugh* is also not instructive here.

Commenter Johnson objects to the "no" result statement's reference to "regulated production, possession and use as permitted under the Oregon Medical Marijuana Act," on the ground that the "no" statement should not reference law that the measure would not change. His reliance on *Nesbitt v. Myers*, 335 Or 219, 64 P3d 1133 (2003), as support for that objection is misplaced. In *Nesbitt*, the court specifically recognized that "a description of current law may be helpful in many circumstances[.]" 335 Or at 226. Although the "no" statement's description in *Nesbitt* was not helpful, we believe the reference to the Medical Marijuana Act here is helpful to voters, because it identifies what production, possession, and use of marijuana will be permitted if the measure does not pass.

On our own review, however, we have revised the wording of the "no" statement and added "current medical marijuana laws" to the "yes" vote statement, to make the result statements more parallel and to avoid the potential for confusion that the commenter points out.

Commenter McNichols

Commenter McNichols objects to the result statements for the same reasons he objects to the caption. We do not accept those comments with regard to the result statements.

McNichols additionally comments that the "yes" statement inaccurately suggests that multiple state agencies will regulate marijuana, when in fact only the OLCC will do so. Although the measure requires the Department of Agriculture, and the Oregon Health

Authority to assist in carrying out the duties under section 3 to 70 of the Act, the measure expressly places those duties with the OLCC. Accordingly, we agree with this comment, and we have modified the "yes" statement accordingly.

McNichols also asserts that the phrase "exempting 'homegrown marijuana' (defined)" is unclear and fails to acknowledge the measure's limitations on the use of homegrown marijuana. He suggests an alternate "yes" statement providing: "exempts limited 'homegrown marijuana' (defined) from felony penalties." Because we have deleted "exempting 'homegrown marijuana' (defined)" from the "yes" statement, we need not adopt the commenter's proposed alternative.

C. The Summary

The draft summary provides:

Summary: Currently, cultivation, possession, delivery, sale of marijuana are unlawful, excepting regulated production, possession, use of medical marijuana. Measure allows production, processing, delivery, possession, sale of marijuana to adults, licensed, regulated by Oregon Liquor Control Commission (OLCC). Marijuana producer, processor, wholesaler may deliver "marijuana items" (defined) only to/ on licensed retail premises. OLCC collects tax imposed on marijuana producer at different rates for marijuana flowers, leaves, immature plant. "Homegrown marijuana" (defined) not regulated, taxed. Tax revenues, fees fund OLCC suspense account, Oregon Marijuana Account distributed: 40% to Common School Fund; 20% for mental health/alcohol/drug services; 15% for state police; 20% for local law enforcement; 5% to Oregon Health Authority. "Marijuana paraphernalia" (defined) excluded from "drug paraphernalia" laws. Other provisions.

Commenter Johnson

Commenter Johnson objects to the word "cultivation" in the summary and suggests replacing it with "production." We agree that "cultivation" is inappropriate, and we have replaced it with "manufacture."

Next, Johnson reiterates his objection to stating that homegrown marijuana is not "regulated." We disagree. The measure expressly gives the OLCC responsibility for the regulation of "the purchase, sale, production, processing, transportation, and delivery of marijuana items in accordance with the provisions of sections 3 to 70 of this Act." Thus, although the measure includes limitations on the permitted activities, those activities are to be regulated by the OLCC. Homegrown marijuana, as defined, is exempted from regulation by the OLCC.

Johnson comments that the description of the taxation and distribution of revenues should be in closer proximity in the summary. Our revision of the draft summary resolves that question. He further asserts that the description of how the distribution operates is flawed. In addition, he comments that the mechanism of how the revenues are handled is of minimal importance to voters, whereas the distribution of revenues is of great importance. We agree, and we have revised the draft summary accordingly.

Finally, this commenter writes that the summary should mention "the local option aspect of the initiative"; that "local governments may prohibit or regulate retail marijuana establishments within their boundaries." We agree with that comment, and we have changed the summary in response.

Commenter McNichols

Mr. McNichols reiterates the comments he made about the other sections of the draft ballot title. In particular, he comments that the draft summary is misleading for failing to mention that the measure "includes statutory language that imposes severe penalties, including felonies, on minors and adults for possessing and growing small amounts of marijuana." He asserts that the summary's statement that homegrown marijuana is not regulated or taxed is particularly misleading, because voters are not told about the potential felony penalties. Finally, he comments that voters must be told the measure "creates six brand new felonies in the state of Oregon." We do not agree that the measure does so. Unlawful possession of certain amounts of marijuana is currently a felony crime, as are unlawful manufacture and unlawful delivery. The measure amends the description of those crimes, but does not necessarily create new felony crimes. To clarify that point for voters, we have added "[c]onforms criminal laws" to the summary.

December 30, 2014

Page 7

D. Conclusion

For the above reasons, we certify the attached ballot title.

Sincerely,

Judy C. Lucas
Senior Assistant Attorney General
Judy.lucas@doj.state.or.us

JCL:kak/4882251

Anthony Johnson
5704 N. Missouri Ave
Portland, Oregon 97217

Steven C. Berman
Stoll Berne
209 SW Oak St. Ste 500
Portland, Oregon 97204

Michael D. McNichols
The McNichols Law Office PC
181 N. Grant St. Ste. 206A
Canby, Oregon 97013

Certified by Attorney General on December 30, 2014.

Judy C. Lucas
Assistant Attorney General

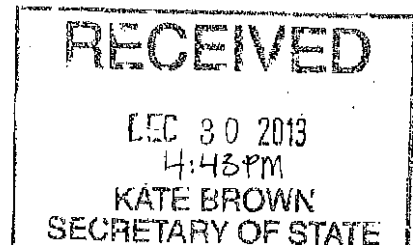
BALLOT TITLE

**Allows possession, manufacture, sale of marijuana by/ to adults, subject to state
licensing, regulation, taxation**

Result of "Yes" Vote: "Yes" vote allows possession, authorizes in-state manufacture, processing, sale of marijuana by/to adults; licensing, regulation, taxation by state; retains current medical marijuana laws.

Result of "No" Vote: "No" vote retains laws classifying cannabis as a controlled substance; prohibiting most sale, possession, manufacture of cannabis; permitting production, possession of cannabis for medical use.

Summary: Currently, manufacture, possession, delivery, sale of marijuana (cannabis) are unlawful, excepting regulated production, possession, use of medical marijuana. Measure supersedes state, local laws relating to cannabis (marijuana), except medical marijuana and driving under the influence laws. Conforms criminal laws. Allows production, processing, delivery, possession, sale of marijuana to adults, licensed, regulated, taxed by Oregon Liquor Control Commission (OLCC). Producer, processor, wholesaler may deliver "marijuana items" (defined) only to licensed retail premises. City/county may prohibit sales. Limited amounts of "homegrown" marijuana (defined) not regulated, taxed. Taxes marijuana producers. Tax revenues, fees distributed: 40% to Common School Fund; 20% for mental health/alcohol/drug services; 15% for state police; 20% for local law enforcement; 5% to Oregon Health Authority. Other provisions.



NOTICE OF FILING AND PROOF OF SERVICE

I certify that on February 12, 2014, I directed the original Respondent's Answering Memorandum to Petitions to Review Ballot Title Re: Initiative Petition No. 37 (Supreme Court) to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and served upon Michael D. McNichols, attorney for Mike McNichols, by using the court's electronic filing system.

I further certify that on February 12, 2014, I directed the Respondent's Answering Memorandum to Petitions to Review Ballot Title Re: Initiative Petition No. 37 (Supreme Court) to be served upon Anthony Johnson, chief petitioner, by mailing a copy, with postage prepaid, in an envelope addressed to:

Anthony Johnson
5704 N Missouri Ave
Portland, OR 97217

/s/ Judy C. Lucas

JUDY C. LUCAS #903285
Senior Assistant Attorney General
judy.lucas@doj.state.or.us

Attorney for Respondent
Ellen Rosenblum, Attorney General,
State of Oregon