

IN THE SUPREME COURT OF THE STATE OF OREGON

MIKE MCNICHOLS,

Petitioner,

V.

ELLEN ROSENBLUM, Attorney General of
the state of Oregon,

Respondent.

SC No. _____

**PETITION TO REVIEW BALLOT TITLE
CERTIFIED BY THE ATTORNEY GENERAL
(INITIATIVE PETITION #37 (2014))**

Ballot title certified December 30th, 2013

Michael D. McNichols, OSB #923956
The McNichols Law Office PC
181 N. Grant Street, Suite 206A
Canby, Oregon 97013
(503) 266-8687
(503) 266-8689 *fax*
mcnichols.law@gmail.com

Ellen Rosenblum, OSB #753239
Attorney General
1162 Court Street NE
Salem, Oregon 97310
(503) 378-4402
(503) 378-6306 *fax*
Attorney for Respondent

Chief Petitioner: Anthony Johnson

Petitioner Mike McNichols (herein “Petitioner”) seeks review of the ballot title certified by the Attorney General for Proposed Initiative Petition #37 (2014) (“Petition” or “the Petition”) captioned:

ALLOWS POSSESSION, MANUFACTURE, SALE OF MARIJUANA BY/TO ADULTS SUBJECT TO STATE LICENSING, REGULATION, TAXATION

The full text of the ballot title as certified to and filed with the Secretary of State, in addition to the Attorney General’s supporting memorandum, is set out in Exhibit A. A photocopy of the text of the measure as submitted to the Secretary of State is attached as Exhibit B.

I. PETITIONERS’ INTEREST IN THE MATTER

Petitioner is an elector who is dissatisfied with the foregoing certified ballot title. Petitioner submitted timely written comments on the certified title to the Secretary of State on December 12th, 2013, attached as Exhibit C. Petitioner’s objections to the Caption, Results Statements and Summary certified by the Attorney General relate to the arguments and comments he made during the administrative comment period objecting to the caption.

Petitioners’ objections to the Caption, Results Statements and Summary certified by the Attorney General also relate to new language the Attorney General inserted into the certified Ballot Title after the end of the administrative comment period. Because some of the language the Petitioners object to was inserted into the certified Ballot Title after the expiration of the administrative comment period, Petitioners are entitled to raise these objections for the first time before this Court. *Carley v. Myers*, 340 Or. 222, 232, 132 P.3d651, 656, (2006).

II. REASONS THE CERTIFIED BALLOT TITLE FOR PETITION #7 (2014) DOES NOT SUBSTANTIALLY COMPLY WITH ORS 250.035(2) - (5)

The certified caption does not comply with the requirements of ORS 250.035(2)-(5) because the certified caption (1) does not accurately state the subject matter of the

Petition, and (2) and uses politically charged and emotionally laden terms in violation of this Court's case law.

III. ARGUMENTS AND AUTHORITIES

When reviewing a certified ballot title, the job of this Court is to "decide whether the Attorney General's certified ballot title is in "substantial compliance" with the statutory requirements." *Huss v. Kulongoski*, 323 Or 266, 269, 917 P2d 1018 (1996).

A. 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/TO ADULTS, SUBJECT TO 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. A ballot title must not give undue influence to one aspect of the proposed measure at the expense of a full description of the general subject of the measure. *Phillips v. Myers*, 321 Or. 221, 936 P.2d 964 (1997).

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.3d 1227 (2008). It must "inform potential petition signers and voters of the sweep of the measure." *Id. citing Terhune v. Myers*, 342 Ore. 475, 479, 154 P.3d 1284 (2007). A caption should not "understate or overstate the scope of the legal changes that the proposed measure would enact." *Id. citing Kain/Waller v. Myers*, 337 Ore. 36, 40, 93 P.3d 62 (2004). If a proposed measure has more than one subject, each should be identified in the caption if it is

possible to do so within the 15-word limit. *Whitsett v. Kroger*, 348 Or. 243, 247, 230 P.3d 545 (2010). In other words, a caption cannot focus on only one thread of a petition, but instead must focus on the entire blanket, so as to encompass all the subjects covered by the measure. See *Witt v. Myers*, 325 Or. 221, 936 P.2d 964 (1997).

A caption's terms must not understate or overstate the scope of the legal changes that the proposed measure would enact. *Kain/Waller v. Myers*, 337 Or. 36, 93 P.3d 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.3d 1192 (2006) citing *Kain/Waller*, 337 Or. at 41 (emphasis added).

It cannot seriously be argued that the Petition's biggest change, in the context of existing law, is to make the use and possession of marijuana in the state of Oregon legal. In that same vein, the Petition replaces current criminal laws regulating the use and possession of marijuana with criminal laws that both (a) allow for the personal use and possession of marijuana and (b) reduce the criminal penalties for the use and possession of marijuana above a certain amount.

For instance, under current law, ORS 475.864(3)(a) makes the possession of four avoirdupois ounces or more of marijuana a Class C felony. Section 6(a) of the Petition makes it legal for a person to possess up to eight ounces of usable marijuana "at a given time". Further, while current law makes the possession of more than four ounces of marijuana a Class C felony, Section 69(1) of the Petition makes possession of more than eight ounces of marijuana a Class A misdemeanor. This is but one of many examples of how the Petition effectively repeals current criminal laws in Oregon regulating marijuana.

In *Carson v. Kroger*, 351 Or. 508, 270 P.3d 243 (2012) , this Court explained that a caption should identify the subject of a proposed measure by looking at the text of the proposed measure and determining the changes the proposed measure would make to existing law. *Carson*, 351 Or. at 513. Then, the Court evaluates whether the caption

reasonably identifies those effects. *Rasmussen v. Kroger*, 350 Or. 281, 285, 253 P.3d 1031 (2011).

The language of current law cannot be argued. The language of the Petition (and the changes the Petition makes to current law) cannot be argued. And yet, in response to these arguments, the Attorney General simply responded “We believe that description of the measure’s effect is inaccurate.” *See* Ex. A, pg. 2. The Attorney General’s rejection out-of-hand of the Petitioner’s arguments is nonsensical.

Quite simply, the major effect of the Petition 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. While the Caption apprises the voter of the fact that the Petition allows for the use and possession of marijuana in Oregon, the Caption fails to apprise the voter of an equally important effect of the Petition, to repeal criminal laws regulating marijuana in Oregon.

The Caption focuses on one aspect of the Petition, and fails to give the voter the full effect of the Petition, in violation of the requirements of ORS 250.035(2)(a). The Certified Ballot Title should be remanded back to the Attorney General with instructions to rewrite the Certified Ballot Title to comply with the requirements of ORS 250.035(2)(a).

B. The Resulting Statements

The results statements fail for the same reasons discussed in Section A. of this Petition For Review and should also be remanded to the Attorney General for revision.

C. Summary

The certified summary is also legally deficient for the reasons articulated above, as well as for the following additional reasons.

In *Kane v. Kulongoski*, 318 Or. 593, 871 P.2d 993 (1994), a challenge to the certified ballot title for what would become Oregon’s “Death With Dignity Act”. The proposed measure abolished criminal penalties for, among other acts, assisting another

person in taking his or her life. *Id.* at 602. The certified summary in *Kane* failed to apprise the voter of this substantial change proposed by the measure. This Court held that such a change - abolition of criminal penalties for aiding another in the taking of his or her life - had to be included in the measure's summary. *Id.* at 605. This Court modified the measure's summary to include the following:

Removes criminal penalties for qualifying physician-assisted suicide.

Id. (emphasis original)

In this case, the 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. Instead, the certified summary makes a vague reference to "superceding state and local laws relating to cannabis". As noted above in Section A, the Petition does much more than "supercede" state and local laws, the Petition actually repeals and replaces existing laws regulating the use and/or possession of marijuana in Oregon. The certified summary should reflect this important effect of the Petition.

V. CONCLUSION

For the reasons discussed above, the certified ballot title for Proposed Initiative Petition #37 (2014) should be remanded back to the Attorney General for modification.

Respectfully submitted this 14th day of January, 2014.

/s/ Michael McNichols
Michael D. McNichols, OSB #923956
The McNichols Law Office PC
181 N. Grant Street, Suite 206A
Canby, Oregon 97013
(503) 266-8687
(503) 266-8689 *fax*
mcnichols.law@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing **Petition for Review** on the following:

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

The Honorable Ellen F. Rosenblum
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301

Anthony Johnson
5704 N Missouri Avenue
Portland, Oregon 97217

by the following method or methods on the date indicated below:

- ☒ [X] by **MAILING** full, true and correct copies in sealed, postage paid envelopes, addressed as shown above, and deposited with the U.S. Postal Service at Portland, Oregon;
- ☐ [] by **FAXING** a full , true and correct copy to the parties indicated above at the fax number so indicated.
- ☐ [] by **ELECTRONIC MAILING** a full , true and correct copy to the parties indicated above at the e-mail address so indicated.
- ☐ [] by causing full, true and correct copies to be **HAND DELIVERED** to the parties, and at the addresses indicated above.

Dated this 14th day of January, 2014

/s/ Michael McNichols
Michael D. McNichols, OSB #923956
The McNichols Law Office PC
181 N. Grant Street, Suite 206A
Canby, Oregon 97013
(503) 266-8687
(503) 266-8689 *fax*
mcnichols.law@gmail.com

EXHIBIT A.

KATE BROWN
SECRETARY OF STATE



JIM WILLIAMS
DIRECTOR
255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722
(503) 986-1518

For Immediate Release:
December 31, 2013

Contact: Lydia Plukchi
Elections Division
(503) 986-1518

The Office of the Secretary of State received a certified ballot title from the Attorney General on December 30, 2013, for initiative petition #37, proposing a statutory amendment, for the General Election of November 4, 2014.

In addition, Secretary of State Kate Brown determined that the proposed initiative petition was in compliance with the procedural requirements established in the Oregon Constitution for initiative petitions.

The certified ballot title is as follows:

**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.

Chief Petitioner(s): Anthony Johnson, 5704 N Missouri Avenue, Portland, OR 97217.

Copies of the text of this initiative are available at www.oregonvotes.gov.

There now follows an appeal period of 10 business days. Any elector dissatisfied with the ballot title certified by the Attorney General, who also submitted in a timely manner written comments which addressed the specific legal standards a ballot title must meet, may petition the Supreme Court for a different title. The appeal period ends at 5:00 p.m. on January 14, 2014. The appeal procedures are outlined in ORS 250.085.

The required number of signatures for placement on the 2014 General Election ballot is 87,213. These signatures shall be filed in this office not later than July 3, 2014.

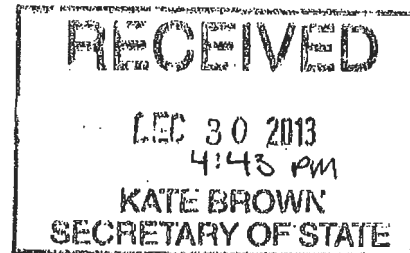
#



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.

D. Conclusion

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

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

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.

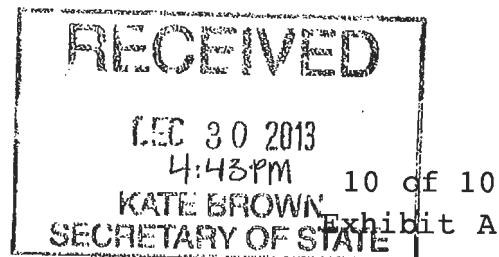


EXHIBIT B

KATE BROWN
SECRETARY OF STATE



JIM WILLIAMS
DIRECTOR
255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722
(503) 986-1518

November 19, 2013

To All Interested Parties:

Secretary of State Kate Brown is responsible for the pre-election review of proposed initiative petitions for compliance with the procedural constitutional requirements established in the Oregon Constitution for initiative petitions. This review will be completed before approving the form of the cover and signature sheets for the purpose of circulating the proposed initiative petition to gather signatures.

The Secretary of State is seeking public input on whether proposed initiative petition (#37), satisfies the procedural constitutional requirements for circulation as a proposed initiative petition. Petition #37 was filed in our office on November 19, 2013, by Anthony Johnson, for the General Election of November 4, 2014.

A copy of the text of this proposed initiative petition is on the second page of the letter. If you are interested in providing comments on whether the proposed initiative petition meets the procedural constitutional requirements, please write to the secretary at the Elections Division. Your comments, if any, must be received by the Elections Division no later than December 12, 2013, in order for them to be considered in the review.

KATE BROWN
Secretary of State

BY:

Lydia Plukchi
Compliance Specialist

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) ~~[If]~~ 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) ~~[If]~~ 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

EXHIBIT C

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 P2d 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 *Kain/Waller 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. *Kain/Waller 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 *Kain/Waller*, 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. Kulongoski*, *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 the 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.

Michael D. McNichols