

**Model Legislation:
Rice University's Baker Institute and
the South Texas College of Law
Drug Policy Collaboration 2013**

Part 8 of 8: Model Commercial Legislation

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The following is one of several collections of model statutes produced by the legislation class at South Texas College of Law (STCL) during the spring 2013 semester. The class was offered in collaboration with Rice University's Baker Institute. Students attended lectures on drug policy, legislation, and statutory interpretation conducted by Dru Stevenson, J.D., STCL professor and Baker Institute Scholar; Nathan Jones, Ph.D., Alfred C. Glassell III Postdoctoral Fellow in Drug Policy; and William Martin, Ph.D., Harry and Hazel Chavanne Senior Fellow in Religion and Public Policy and director of the Baker Institute's Drug Policy Program. Each student completed a project addressing one aspect of marijuana legalization or postlegalization regulation through a model statute or ordinance. Links to each of the model statutes can be found at bakerinstitute.org/model-legislation-2013. Neither the Baker Institute nor the South Texas College of Law endorse any particular policy. The model legislation has not undergone editorial review by the Baker Institute.

1 GENERAL PROVISIONS

1.1 Commercial Cannabis Control Act (CCCA)

1.2 Purpose of Act. The Commercial Cannabis Control Act is hereto enacted for the purpose of developing state revenue and to protect the safety and welfare of people of this state. In enacting CCCA, it is not the purpose of this legislature to reduce temperance; instead, it is the protection of otherwise lawful people of this state and to provide for the benefit of all members of this state. (Cal Bus & Prof Code § 23001) The state has exclusive right and power to control, license and regulate the manufacture, sale, purchase, possession, transportation and distribution of cannabis and cannabis products within the state. Id. This act is an exercise of the police power of the protection of the warfare, health, peace, temperance, and safety of the people of this state. It will be liberally construed to accomplish said purposes. Tex. Alco. Bev. Code Ann. § 1.03 (West).

1.3 Public Policy. While the idealistic stated motives behind the war on drugs and the prohibition of cannabis were noble, they have proved to be misguided and burdensome. Previous laws prohibiting the use of Cannabis have created an enforcement nightmare and have cost this state \$_____. This enforcement has caused rifts in the moral tapestry of upstanding citizenry. Otherwise law-abiding citizens routinely violate the laws of this state by buying and consuming Cannabis and Cannabis products. The demand for the illegal products has created an opportunity for criminal elements to develop a national network for the supply and distribution of these products to the populace. To accommodate the interests of the consuming public, the promotion of local businesses, and the increasing state revenue, and at the same time to guard against the threats of organized crime, unfair competition, and decreased opportunities for small businesses the need for state regulated commercialization of the cannabis products has developed . Tex. Alco. Bev. Code Ann. 6.03(b)-(g) (west)

1.4 Definitions.

1.4.1 “Cannabis Product” means _____ (Smockables, Edibles, Hash, etc.).

1.4.2 “Illicit Product” means a Cannabis product:

- 1) manufactured, distributed, bought, sold, packaged, mixed, processed, warehoused, stored, possessed, imported, or transported in violation of this act;
- 2) on which a tax imposed by the laws of this state has not been paid and to which the tax stamp, if required, has not been affixed; or
- 3) possessed, kept, stored, owned, or imported with intent to manufacture, sell, distribute, package, mix, process, warehouse, store, or transport in violation of this act.

- 1.4.3 “Person” means a natural person or association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them.
- 1.4.4 “Applicant” means a person who submits or files an original or renewal application with the county judge, commission, or administrator for a license or permit.
- 1.4.5 “Commission” or “Agency” means the _____ Cannabis Commission.
- 1.4.6 “Licensee” means a person who is the holder of a license provided in this code, or any agent, servant, or employee of that person.
- 1.4.7 “Manufacturer” or “Grower” means a person engaged in the manufacture or growing of Cannabis Products, whether located inside or outside the state.
 - 1) “Micro-Grower” means six (6) or fewer cannabis plants
 - 2) “Macro-Grower” means thirty-six (36) or fewer cannabis plants
- 1.4.8 “Executive management” includes the administrator, the assistant administrator, individuals who report directly to the administrator, and the head of each division of the commission.
- 1.4.9 “Licensed Premises” means the premises specified in an application for a license under this act, which are owned or in possession of the licensee and within which licensee is authorized to cultivate, grow, manufacture, distribute, or sell Cannabis in accordance with this act.
- 1.4.10 “Cannabis Plants” means sativa, indica and ruderalis
- 1.4.11 These definitions may be found at Tex. Alco. Bev. Code Ann. 1.04; H.R. 10-1284, 67th Gen. Assemb. (Col. 2010) ; Colo. Rev. Stat. Ann. § 25-1.5-106 (West)
- 1.5 General Penalty. (a) A person who violates a provision of this act, for which a specific penalty is not provided, is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 not more than \$1,000 or by confinement in the county jail for not more than one year or by both.
 - 1.5.1 (b)The term “specific penalty,” as used in this section, means a penalty which might be imposed as a result of a criminal prosecution. Tex. Alco. Bev. Code Ann. § 1.05 (West).
- 1.6 Act Exclusively Governs. Unless otherwise specifically provided by the terms of this act, the manufacture, sale, distribution, transportation, and possession of alcoholic beverages shall be governed exclusively by the provisions of this act. Tex. Alco. Bev. Code Ann. § 1.06 (West).
- 1.7 Severability of Provisions of Division. If any provision of this division or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this division that can be given effect without the invalid portion or application, and to this end the provisions of this

division are severable. It is the intent of the Legislature that this division would have been adopted regardless if such invalid provision had not been included or any invalid application had not been made. (Cal Bus & Prof Code § 23001)

2 ADMINISTRATIVE PROVISIONS

2.1 _____ Cannabis Commission. (a) The _____ Cannabis Commission is an agency of the state.

2.1.1 (b) The commission may exercise all powers, duties, and functions conferred by this act, and all powers incidental, necessary, or convenient to the administration of this act. It shall inspect, supervise, and regulate every phase of the business of manufacturing, importing, exporting, transporting, storing, selling, advertising, labeling, and distributing Cannabis Products, and the possession of Cannabis Products for the purpose of sale. It may prescribe and publish rules necessary to carry out the provisions of this act.

2.1.2 (c) The commission shall:

- 1) protect the public safety by deterring and detecting violations of this code;
 - 2) promote legal and responsible Cannabis usage and consumption;
 - 3) ensure fair competition within the Cannabis industry;
 - 4) ensure consistent, predictable, and timely enforcement of this act;
 - 5) ensure a consistent, predictable, and timely licensing process;
 - 6) promote and foster voluntary compliance with this act; and
 - 7) communicate the requirements of this act clearly and consistently.
- Tex. Alco. Bev. Code Ann. § 5.31 (West).

3 ACTIVITIES SUBJECT TO REGULATION

3.1 Rights and Privileges. (a) A person may cultivate, manufacture, package, sell, import, export, transport, distribute, warehouse, store, possess, possess for the purpose of sale, blend, mix, and possess equipment or material designed for or capable of use for manufacturing cannabis products. The right or privilege of doing so is granted by this act and the person has first obtained a license of the proper type as required by this act.

3.1.1 (b) A license issued under this act is purely a personal privilege and is subject to revocation or suspension if the holder is found to have violated a provision of this act or a rule of the commission. Tex. Alco. Bev. Code Ann. § 6.01 (West).

3.2 Coordination of Expiration Dates. (a) This act authorizes a licensee to change the expiration date of a license held by the licensee to any date that is agreeable to the regulating agency, consistent with a reasonable annual distribution of renewal application review and to the licensee.

3.3 (b) The fee for an application for a change in expiration date is \$25 per license affected.

3.4 (c) The regulating agency may not abate or refund a license fee because of a change in the expiration date made under this section but may authorize a license period of less than one year for the period during which the expiration date is changed. The agency may not authorize a license period of greater than two years at the set annual rate. Tex. Alco. Bev. Code Ann. § 6.02 (West).

4 GROWING LICENSES

4.1 Necessity for License. No person may manufacture or grow Cannabis for the purpose of sale, import it into this state, distribute or sell it, or possess it for the purpose of sale without having first obtained an appropriate license as provided in this act. Each licensee shall display his license at all times in a conspicuous place at the license place of business. No person shall exercise the privilege or perform any act which a licensee may exercise or perform under the authority of a License unless the person authorized to do so by a license issued pursuant to this act. Tex. Alco. Bev. Code Ann. § 2.01 (West).

4.2 Micro-Growers License.

4.2.1 Authorized Activities. (a) The holder of a Micro-Growers (MiG) License may:

- 1) Possess, cultivate and harvest up to six (6) Cannabis plants.
- 2) Store, market and sell cannabis products within the guidelines of Chapter 4.

4.2.2 Fee. The annual state fee for a (MiG) License is \$1,500.

4.2.3 Storage. The MiG Licensee may store up to _____ for no more than One year.

4.3 Macro-Growers License.

4.3.1 Authorized Activities. (a) The holder of a Macro-Growers (MaG) License may:

- 1) Possess, cultivate and harvest up to Thirty-six (36) Cannabis plants.
- 2) Store, market and sell cannabis products within the guidelines of Chapter 4.

4.3.2 Fee. The annual state fee for a (MaG) License is \$2,500.

4.3.3 Storage. The MaG Licensee may store up to _____ for no more than One year.

4.4 Required Quality Testing. All Licensees are required to conduct testing on all commercial products in accordance with Chapter 5.

4.5 General Grounds for Refusal of License. (a) The regulating agency may refuse to issue an original or renewal license with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exists:

- 4.5.1 Act Violation. The applicant has been convicted in a court of competent jurisdiction of the violation of any provision of this act during the two years immediately preceding the filing of his application;
 - 4.5.2 Recent Felony. Five years have not elapsed since the termination, by pardon or otherwise, of a sentence imposed on the applicant for the conviction of a felony;
 - 4.5.3 Moral Turpitude Violation. Within the six-month period immediately preceding his application the applicant violated or caused to be violated a provision of this act which involves moral turpitude, as distinguished from a technical violation of this code or of the rule;
 - 4.5.4 Improper Application Answer. The applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application;
 - 4.5.5 Delinquent Taxes. The applicant is indebted to the state for any taxes, fees, or payment of penalty imposed by this act;
 - 4.5.6 Failure to Have Good Moral Character. the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad;
 - 4.5.7 the applicant is a minor;
 - 4.5.8 Place Violate Public Sense of Morality. The place or manner in which the applicant may conduct his business warrants the refusal of a license based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency;
 - 4.5.9 A Habit of Excess. The applicant is in the habit of using Cannabis Products to excess or is physically or mentally incapacitated;
 - 4.5.10 Violation of Local Election. The applicant will sell Cannabis products in a manner contrary to local election law or will knowingly license an agent, servant, or employee to do so;
 - 4.5.11 Citizenship. The applicant is not a United States citizen or has not been a citizen of _____ for a period of one year immediately preceding the filing of his application;
 - 4.5.12 Residing with violator of License. The applicant is residentially domiciled with a person whose license has been cancelled for cause within the 12 months immediately preceding the date of his present application;
 - 4.5.13 Lewd Premises. During the six months immediately preceding the filing of the application the premises for which the license is sought have been operated, used, or frequented for a purpose or in a manner that is lewd, immoral, or offensive to public decency. Tex. Alco. Bev. Code Ann. § 11.45 (West).
- 4.6 Must Display License. All licenses shall be displayed in a conspicuous place at all times on the licensed premises.

4.7 Unauthorized Use of License. No licensee may consent to or allow the use or display of his license by a person other than the person to whom the license was issued. Tex. Alco. Bev. Code Ann. § 11.05 (West).

5 QUALITY AND LABELING OF PRODUCT

5.1 Purpose. In the interest of protecting consumers and ensuring quality of products, this act sets forth standards for quality and labeling.

5.2 Quality standards. (a) This act requires that any cannabis product sold in this state conform in all respects to its advertised quality and potency.

5.2.1 (b) The regulating agency may test the contents of any cannabis product manufactured or sold in the state to protect the public health and safety and to ensure that the product:

- 1) Is accurately represented to the public; and
- 2) Complies with state law and this act. Tex. Alco. Bev. Code Ann. § 5.38 (West).

5.3 Packaging requirements.

5.4 Labeling standards. Informed consumers are essential to the fair and efficient functioning of a free market economy. Packages and their labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons. 15 U.S.C.A. § 1451 (West)

5.4.1 Contents of label. No person shall distribute or cause to be distributed in commerce and packaged product unless it conforms to the following requirements.

- 1) Name and Location. The product shall bear a label specifying the identity of the product and the name and place of business of the manufacturer, packer, or distributor and breed of plant;
- 2) Net Quantity. The net quantity of contents (in terms of weight or mass, measure, or numerical count) shall be separately and accurately stated in a uniform location upon the principal display panel of that label, using the most appropriate units of both the customary inch/pound system of measure.
- 3) Easily Legible. The label shall appear in conspicuous and easily legible type in distinct contrast (by typography, layout, color, embossing, or molding) with other matter on the package; 15 U.S.C.A. § 1453 (West)
- 4) List of Intoxicants and Hallucinogens. Shall list levels of (THC), _____, _____, _____ per unit measure;
- 5) Color Coded. Label shall be color coded by degree of intoxicants and Hallucinogens. The colors are in increasing levels of potency as follows: Green, Blue and Red;

6) Net Characterization. Colors shall correspond to the net levels of potency. The potency for Green labeled products shall not exceed __X__ amount per unit. Blue labeled products shall be no less than __X__ and not greater than __Y__ amount per unit. Red labeled products shall range from __Y__ to __Z__ the maximum level authorized for public safety.

5.4.2 Nonconforming labels. It shall be unlawful for any person engaged in the sale of or engage in commerce to sell cannabis products unlabeled or improperly labeled. Violators of this act will be fine no less than \$250 and no more than \$2500 depending on degree and quantity of violation by agencies discretion. 15 U.S.C.A. § 1452(a) (West)

6 TAXATION.

6.1 General Tax Provisions. The commission shall levy a __% tax on all sold Cannabis products.

6.2 Local Fee Authorized. (a) The governing body of a city or town may levy and collect a fee not to exceed one-half the state fee for each license issued for premises located within the city or town. The regulating agency may levy and collect a fee equal to one-half of the state fee for each license issued for premises located within the county.

6.3 (b) The Agency may cancel a license if it finds that the licensee has not paid a fee levied under this section. A licensee who sells a cannabis product without first having paid a fee levied under this section commits a misdemeanor punishable by a fine of not less than \$10 and no more than \$200.

6.4 (c) Nothing in this code shall be construed as a grant to any political subdivision of the authority to regulate licensees except by collecting the fees authorized in this section and exercising those powers granted to political subdivisions by other provisions of this act.

7 CHAPTER LOCAL OPTION ELECTIONS

7.1 The county clerk of the county in which an application for a license is made shall certify whether the location or address given in the application is in a “free” area and whether the sale of Cannabis Products for which the license is sought is prohibited by any valid order of the commissioner’s court.

7.2 The city secretary or clerk of the city in which an application for a license is made shall certify whether the location of address given in the application is in a “free” area and whether the sale of Cannabis Products for which the license is sought is prohibited by charter or ordinance.

7.3 Once a license is issued, the certification that the location or address is in a “free” area may not be changed until after a subsequent local option election to prohibit the sale of Cannabis Products. Tex. Alco. Bev. Code Ann. § 11.37 (West).

Legislative Commentary

Purpose and Motivation

The purpose of this model legislation is to provide state legislatures a functional and uniform statute, which provides for the regulation and taxation of Cannabis products within the current controlled substances regime. Alcohol is currently a highly regulated substance which provides state governments with abundant and consistent revenue. Since there is currently a trend for state legislatures to pass legislation legalizing Marijuana and other Cannabis variations, there is a need to establish an agency to regulate and tax this new revenue source. This agency should be structure to fit within the state's established systems of regulating intoxicants. Ideally this agency will be the state's current Alcohol beverage agency. Having this agency under Alcohol beverages will provide an infrastructure which may be easily implemented, regulated and enforced by the state.

Although alcohol is different from Cannabis by the method of intoxication and distribution, there is substantial reason to include Cannabis under the same agencies. Cannabis is an intoxicant like alcohol. Both products impair judgment and have a need to be regulated to a higher standard for consumer protection. Cannabis, like alcohol, was legal and became illegal due to its altering properties. Since the end of prohibition of Alcohol in 1935, states have learned more efficient ways to make the formerly illegal substance a revenue source. As the prohibition on Cannabis comes to an end, the lessons from the prohibition of alcohol need to be remembered.

The states that pass this model legislation should use the current Alcohol beverage agency to regulate cannabis products as set out in this statute. The agency already has the

infrastructure to support a statewide regulation of sensitive products. States alcohol agencies have a history of restricting control substances on the state level, and the public is familiar and comfortable with the agencies involvement. In addition, there is no reason to reinvent the wheel. If the cannabis agency were apart from the alcohol agency, there would be duplication of similar functions and responsibilities. If there were one agency performing the same administrative duties, there would be a greater level productivity of the state agency. Moreover, a new agency takes time to create and flush out many of the regulations and functions of the agency. If the new Cannabis agency is implemented within the state Alcohol beverage agency, it could adopt many of the preexisting regulations and functions. In order to ensure efficiency and to prevent public waste, the state's new cannabis agency should be within the vast infrastructure of the state Alcohol Agency.

There is a need for uniformity between states. Like other model legislation, the CCCA seeks to standardized and streamline the production and sale of Cannabis products. Uniformity is important because of its economic impact on interstate commerce and the public awareness of state laws. If each state had different laws with very little similarities, it would discourage the flow of commerce between states. In addition, if there were vast differences between state laws, average citizens could not reasonably educate themselves on the differences between jurisdictions. If a legislature intends the general public to educate themselves and follow the laws of the state, the state should legislate a uniform statute with minor variations. With these goals in mind, states should use the CCCA as a template to commercialize Cannabis products.

Using the CCCA as a template also allows for flexibility in the terms and levels of taxation. There are portions of this legislation that are left blank to meet the needs of the individual state needs. This allows a state to include additional standards and stricter

requirements of the commercial products within the uniform framework. For example, using a stand in of X, Y and Z for the chemicals per unit measure allows the state to have discretion on the levels of commercially acceptable products. Leaving the at -risk chemicals undefined allows the state to conduct studies to determine the most dangerous chemicals. In addition, the amount for licenses and the rate of taxation should vary depending on the needs of the state enacting the statute. Meeting the individual needs of the state is an important part of any legislation and using this model legislation allows for a framework that provides a structured flexibility to meet those needs.

Structure and inspiration

This statute has seven sections. These sections include General provisions, Administrative provisions, Activities subject to regulations, Growing licenses, Quality and labeling products, Taxation, and Local option election. Each section is important to establish a governing structure of this statute. Without the General provisions, the motivation of the statutes would not be in the mind of the enacting legislature nor implementing courts. The Administrative provision provides the backbone for the statute. Without this section, there would be no agency to enforce the enacted law. This section provides basic powers and guidelines for the agency to enforce. The activities subject to regulations section sets forth the parameters of this act and provides guidance to citizens abiding by this act. The growing licenses section is the heart of this act. It sets forth both the right and responsibilities of the license holders but also the license process. This section insures revenue for the enacting state and it sets up a legal way to make a business out of this new revenue source. One major difference between this statute and other cannabis statutes is that it established a standard for customer protection. Like other products on the market, there should be proper labeling and some level of product quality. The

standards set in this portion are extremely important for the licensee because they will be required to comply with each one of the requirements. Since taxation is a major motivation of this statute, this section sets a general rate of taxation that may vary depended on the need of the state. There is substantial room to qualify or increase the tax. Finally, this statute allows for a local option election. This section is designed to create areas free from the sale of Cannabis products. This is particularly important for states that are deeply divided on the subject and availability of cannabis. Allowing some areas to be free areas will allow areas strongly opposed to the use and consumption of cannabis to opt out of the selling of the products. Each section is important to the whole legislation, but may be modified to meet the needs of the enacting statute.

The inspiration for this piece of legislation was primarily the Texas Alcoholic Beverage Commission and the California Alcoholic Beverage Control Act. Both of these statutes currently regulate alcoholic beverages in large states and have significant relevance when crating a model legislation for another similar substance. When the legislatures consider this model legislation, they should also look to these other legislations to form the final legislation. The influences of these two statutes are most apparent in the language of the provisions and sections, which were included. For example, both the TABC and the CAC have provisions included in this model legislation. They both have General provisions, Administrative provisions, license section, labeling sections and segments describing the taxed or fees on the products. In addition, TABC also has the Local option election portion and the activities subject to regulations. Some additional sections a legislature may be consider replicating includes, Imports, Insurance of licenses, regulatory and penal provisions, individual provisions for particular Cannabis products like the separate provisions for wine verses liquor. Both of these statutes were the structural

motivation behind the model statute and important to fit the commercialization of cannabis into the current regulatory regime of the states.

Additional inspiration for this statute comes from the Florida Food Safety bill, the Washington, California and Colorado medical cannabis statutes and the federal fair packaging and labeling act. The Florida food safety bill and the Federal fair packaging and labeling act provided inspiration for the Growing licenses, and Quality and labeling products sections. It is important to set standards for quality products and to follow federal standards. The medical cannabis statutes help the drafters to understand the current trend in legalization and are examples of the proper tone for a piece of legislation affecting the treatment of Cannabis and like substances. One major way this model statute for the commercial regulation of Cannabis products differs from the previous Cannabis statutes is that it focuses on fostering revenue for the state. This statute is not about individual rights or freedom of expression, but the economic return of a new legalized substance. There is a place for this idealistic expression, but it belongs in a preamble or in a more fundamental legislation regarding the legalization of Cannabis.

Assumptions and complementing legislation

This model legislation is for the commercialization of Cannabis products and not the general legalization of them. It sets forth a framework to regulate the production and the commercial sale of Cannabis and Cannabis products; this framework fits neatly within the current regulatory structure of the states. Having established the place of this statute in the greater scheme of things, there are a few assumptions that the legislature should consider. Some of these assumptions are as follows.

First, this is not an all-inclusive statute. It is limited in scope and subject matter. Second, this statute assumes that Marijuana and Cannabis products are legal. Not only is legalization assumed, the type of legalization is also made a premise. There two types of legalization that would fit this model legislation best. The total removal of prohibition on Cannabis would be ideal, but the legalization of medical marijuana could still support a sustainable revenue source. Third, that there is already a state commission regulating alcohol in the state. Fourth, that for the Cannabis agency has given authority to regulate the sale of cannabis products by the general legalization statute. Fifth, that the commission preforms a study determining the “at-risk” substances to be regulated. Sixth, that there will be a second statute picking up where this one leaves off for the requirements for retail sales. Seventh, that the federal government does not step in and impose the supremacy clause prohibiting any state from legalizing Cannabis.

Since this is a piece of legislation is limited in scope, there are complementary legislations that should be considered when passing this this legislation. First, a legalization statute is imperative. Depending on the type of legalization statute, it may be important to have a separate statute to govern violators of that statute. The second important statute is one that provides some guidance for the retail sale of Cannabis. Even though this statute in broad enough to encompass the regulation of the retail side of sale, there is no express portion stating details. Finally, there should be a statute addressing the tort claims resulting from the legalization and commercialization of Cannabis and Cannabis productions. This statute provides a set of standard, which would make product liability possible, but this determination should be left to the legislature to develop the details. However, it may be prudent for the cannabis statute to reflect the same tort provisions as the Alcohol statute. Any one of these additional statutes may be included within this legislation or may be supplement to it.

Analysis

Chapter 1: General Provisions

Chapter one of this statute provides some general provisions that are needed establish a Cannabis statute. Within this portion, there is a description of the name, purpose, public policy, general definitions, general penalty, governing power and severability sections. These sections are included in the general provisions section because they would not fit in any other category and yet are vital to the enforcement and proper understanding of the goals of the statute. Both the purpose and the public policy are important because they establish the tone and motivation for the enacted legislature. Since this is a model piece of legislation, any legislature enacting this act should take these sections as an opportunity to tailor their message for their particular state. The definitions section is particularly important to set the meaning for the words in the statute. This definition section is not complete. For example, Cannabis Products has a blank after the words for the legislature to include the particular meaning of the products that are going to be limited. This is incredibly important because the meaning is intentionally very broad and the legislature should limit the definition based on the needs of the state. The state may choose to restrict the definition to only particular form of Cannabis or the state could include all forms. The Severability clause and the exclusive governing clause are standard for statutes regulating any given product. In addition to these sections, the enacting legislature should contemplate the need of their state and include additional clauses that address those concerns.

Chapter 2: Administrative Provisions

Chapter two of this statute is the administrative provisions. Section 2.1 establishes a commission to enforce this act. Ideally, the legislature will also include a provision that will model this commission after their current alcohol commission. The enacting legislature may

even choose include a section requiring the cannabis commission to report to the alcohol commission of the state. Section 2.1.1 grants the commission exhaustive authority to regular cannabis products. Similarly, section 2.2.2 provides a specific list of duties and guidelines for the agency to enforce. Although this provision was modeled after an alcohol provision, that does not mean a legislature can't add additional responsibilities to the agency. This is a granting provision giving the commission's authority to act in line with its responsibilities. Further, when enacting this model statute the legislature should add to this section to fill in the commission itself. Use the formation and structure of the other state commissions and agencies to fill in these details. This section is the backbone of the statute and provides for its enforcement.

Chapter 3: Activities Subject to Regulation

If chapter two is directed at the commission, chapter three is directed at the individuals who will be subject to this statute. Chapter three is the activities subject to regulation. Section 3.1 grants rights and restricts them in the same paragraph. It first established a laundry list of rights that a person may engage in, but then restricts the person to one whom has first obtained a license. This is significant because it does not completely open the market for Cannabis without regulation. It allows for state taxation, consumer protection, and general regulation of this newly legalized product. Moreover, requiring persons to obtain a license restricts the quantity of individuals and the type of person engaging in the growing and production of Cannabis. This section and section 4.5 are particularly important to ensure the professionalism of this new industry. Section 3.1.1 provides a corrective measure for licenses issued to persons violating the provisions of this act. Sections 3.2-3.4 are sections dealing with the expiration of the issued license. The state may choose to make the expiration dates short or long depending on the goals

of the state. This section is important to aid the persons subject to regulations to abide by the parameters set forth in this act and provides guidance for potential investors.

Chapter 4: Growing Licenses

Chapter four sets forth the actual growing licenses. Section 4.1 protects the license holders from non-license holders from engaging in the sale and production of Cannabis products. This is important because the license holder will be bound by much needed regulations and protective measures, and if a non-licensed person is able to grow and sell products without those measures then there will be no incentive for the licensed persons. The licensing provides an exclusive market that will be profitable for both the licensee and the state. Sections 4.2 and 4.3 are the two types of licensing. The number of plants is deliberately very different. Six plants, as in the Micro-Growers license, are enough to get a small business to have a sustainable and continuous production of product. Whereas, the thirty-six plant authorization of the Macro-Grower licenses is meant to allow mass production of products by a larger corporation. This distinction between small and local growers is intended to replicate the beer market. There are major distributors and there are microbreweries that specialize and produce a particular product. The state should conduct its own study to maximize the profitability of the licensing. Section 4.4 notifies the licensee that it will be held to the quality and labeling standards provided in Chapter 5. Section 4.5 acts as a gatekeeper to ensure that licensee are upstanding and law abiding citizens. These are a few of the same factors used to restrict alcohol licensing. There is a focus of the moral character of the applicant. A strong moral character is important for most industries, but for an industry emerging at a time when non-lawful actors have dominated the sale and production of such a product, the need for professional integrity is even more important. In section 4.6 and 4.7, an authorized person must display the license in a conspicuous place. This chapter is the heart of

this statute, makes this formerly illegal substance a state sanctioned profitable business and revenue source.

Chapter 5: Quality and Labeling of Products

Chapter five is extremely important because it sets the quality and labeling standards for the products. Multiple portions of this chapter are left blank. First, the packaging requirements are absent and left to state to include the proper container. The container may be a re-sealable container like that of jerky products, or the state may choose to make the container a can. This decision is best left to the state enacting this legislation. The second major blank that a legislature must fill in when enacting this law is the list of intoxicants and hallucinogens. There are many substances within marijuana and Cannabis products that have an effect on humans, but not all of them are considered to be state altering. According to Americans for Safe Access, a medical marijuana advocacy group, stated in its website article “Research: Definitions and Explanations” (accessed Dec. 7, 2006) that “[T]here are 483 different identifiable chemical constituents known to exist in cannabis. The most distinctive and specific class of compounds are the cannabinoids (66 known), that are only known to exist in the cannabis plant”. The most commonly discussed chemicals are 9-tetrahydrocannabinol (THC) and Cannabidiol (CBD), but since there are many stimulants, the legislature should address the major state altering chemicals and require them to be regulated. The state legislature is best situated to conduct a study and select those chemicals that are deemed to be a high risk and that should be required on the label. Similarly, the third blank deals with these same chemicals. Once the state addresses the “at-risk” chemicals, the degree of potency should be regulated as will. This model statute leaves X, Y, and Z to substitute for the determined levels of these chemical that act as threshold amounts in each of the three categories. One additional provision to note is 5.4.2, were it provides a fine for

nonconforming labels. This chapter provides the framework needed for consumer protection. An additional statute that a legislature may be interested in enacting alone this one is a tort granting provision for failing to comply with the provide standards. Nevertheless, without a set standard the state will not be able to perform its duty to protect its citizens against potentially dangerous products.

Chapters 6 &7: Taxation & Local Option Election

The last two chapters deal with relationship to the local and state. First, chapter six provides for taxation both by the state commission and by local governing bodies. Whereas, chapter seven allows particular counties to opt to be “free” areas where the sale of Cannabis Products is prohibited. This option for counties to be “free” areas is modeled after the dry counties in Texas, where alcohol may be consumed but not purchased within county lines. This chapter offers a politically friendly option to allow counties additional control over the sale of Cannabis in their respective areas, by either additional taxes or a complete restriction on the sale of products. The percent that the products are to be taxed was deliberately left blank. The state should determine the proper level. Since Cannabis is being regulated in a similar way to alcohol, it may be appropriate to assign a tax level similar to that of alcohol. These provisions should be meticulously considered when drafting this bill.

When a legislature considers this piece of model legislation, they should consider three things. First, what are the needs of the particular state and how would those need be best met? If the primary need is financial, then there are multiple ways that this statute can provide revenue sources. If the need is to protect otherwise law-abiding citizens from unnecessary involvement with people of mal repute and even jail time, than this statute can provide an infrastructure

prohibiting the involvement of non-upstanding individuals. Alternatively, is the need is to protect the general citizenry of the state from harmful products, all of which are provided within this statute. Second, to what degree would the state legislature like to limit the use of cannabis products? Since this statute provides way to encourage business and to discourage it, the state may tailor its particular act in such a way to meet that goal. Third and most importantly, what other statutes are needed to be passed alongside this statute? The section on supplemental statutes may provide some incite to this question, but since each state is different the legislature should compose a comprehensive piece of legislation that provides for the commercialization of Cannabis Products.