

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

Part 5 of 8: Permits and Licensing for Sellers, Producers, and Buyers of Marijuana

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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.

Introduction to This Collection

By Dru Stevenson, J.D., Helen and Harry Hutchins Research Professor, South Texas College of Law, and Baker Institute Scholar

Permits and licenses are a very robust method for regulating any industry or market. Administrative agencies (usually located in the Executive Branch, with delegated powers from the legislature but leadership appointed by a President or Governor) specialize and develop expertise in their respective areas, and these agencies administer permit or licensing systems. The relevant agencies can implement public policy decision by conditioning the licenses/permits on various eligibility criteria, regular recordkeeping and reporting to the agency, and the threat of revocation for delineated causes. License and permit units currently govern the manufacturing, distribution, and sale of alcohol and tobacco, and it seems probable that a similar system will emerge for the production, distribution, sale, and the possession or use of marijuana.

Some “cradle-to-grave” regulation systems utilize permitting and licensing for each step in the process of producing a good, bringing it to the market, retailing it, allowing for consumer resale, use, and even disposing or discarding the product. For example, automobile manufacturers in the United States must obtain federal regulatory approval to bring a particular make or model of car to market. Auto wholesalers and retailers obtain various licenses and permits in order to maintain a legal and profitable business. The final product is subject to individual vehicle registration in a state (a type of licensing for the car itself), and drivers must have a valid drivers’ license. Mechanics and repairmen have their own certification and licensing processes. Specialized licensing and/or certification apply to drivers and mechanics of commercial vehicles such as large trucks.

A large, established body of law governs procedures for the granting and revocation of licenses and permits generally. According to the Supreme Court, licenses and permits, once granted, are a “property interest” (not the same as a property right), which in turn triggers procedural due process rights for those facing revocation. Agencies must provide “fair” hearings for those facing license or permit revocation, a type of informal mini-trial that is, in turn, subject to judicial review. Nonrenewal of lapsed licenses and permits may not trigger such due process rights, however, so many agencies issues licenses and permits that expire after a time – typically one or two years, but sometimes longer. The wording of the agency’s authorizing statute determines the amount of discretion that an agency has in denying permit applications, revoking existing permits, and promulgating eligibility requirements or conditions.

STATUTE 1

PERMITTING RULES AND REGULATIONS FOR THE GROWING AND SELLING OF MARIJUANA

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PERMITTING RULES AND REGULATIONS FOR THE GROWING AND SELLING OF MARIJUANA

1.0 DEFINITIONS

- a. "MARIJUANA" – IS THE SEEDS, PLANT OF ANY SIZE, PIECES OF THE PLANT, SYNTHETIC VARIATIONS OF MARIJUANA, TETRAHYDROCANNABINOL (THC) OIL, HASH OIL, CANNABIS, OR OTHER SIMILAR SUBSTANCE AS DETERMINED BY THE PERMITTING AGENCY.
- b. "PROCESSED MARIJUANA" – IS ANY PRODUCT THAT INVOLVES THE USE OF, OR AS PART OF THE FINAL PRODUCT, MARIJUANA IN ITS MANUFACTURING PROCESS.
- c. "SELL" OR "SALE" – IS A TRANSACTION ENTERED INTO BETWEEN TWO OR MORE PERSONS OR LEGAL ENTITIES FOR THE PURCHASE OF MARIJUANA. THIS DEFINITION APPLIES ONLY TO RETAIL TRANSACTIONS.
- d. "PERMITEE" – IS AN INDIVIDUAL PERSON, CORPORATION, PARTNERSHIP, OR OTHER LEGALLY RECOGNIZED ENTITY OF THIS STATE THAT HAS BEEN GRANTED A PERMIT TO SELL, GROW, OR GROW AND SELL MARIJUANA IN THIS STATE.

2.0 PURPOSE

- A. THE PURPOSE OF THIS CODE IS TO AID AND GUIDE THE PERMITTING AGENCY IN ESTABLISHING RULES FOR THE PERMITTING AND REGULATION OF MARIJUANA SALE, GROWTH, AND SALE AND GROWTH.

3.0 PERMITTING AGENCY

- a. THE TEXAS ALCOHOLIC BEVERAGES COMMISSION IS HEREBY DESIGNATED AS THE PERMITTING AGENCY UNDER THIS CHAPTER.
- b. THE PERMITTING AGENCY MAY ESTABLISH A SEPARATE AND DISTINCT COMMISSION THAT WILL BE RESPONSIBLE FOR GRANTING, ENFORCING, AND MONITORING THE PERMITS CREATED BY THIS CODE. THE PERMITTING AGENCY SHALL ALSO BE RESPONSIBLE FOR THE:
 - 1) INSPECTION OF A PERMITEE'S FACILITY, INCLUDING THE PERMITEE'S FINANCIAL AND PERSONNEL FILES;
 - 2) COLLECTION OF FEES RELATED TO THE PERMIT;
 - 3) COLLECTION OF TAXES RESULTING FROM MARIJUANA SALES;
 - 4) PROSECUTION FOR VIOLATIONS FOR THE PERMIT OR LACK THEREOF;
 - 5) SEIZURE OF PROPERTY AS A RESULT OF VIOLATIONS OF THE PERMIT OR UNPERMITTED BEHAVIOR; AND
 - 6) ANY ADDITIONAL ACTIONS THAT DO NOT BROADEN THE RIGHTS GRANTED BY THIS CODE.
- c. NOTHING SHALL PREVENT PERSONS CONCURRENTLY EMPLOYED BY THE TABC TO PERFORM THE DUTIES GRANTED TO THE SEPARATE COMMISSION IN ORDER TO FULFILL THAT COMMISSION'S PURPOSE.

- d. THE PERMITTING AGENCY MAY NOT DELEGATE ITS DUTIES FOR THE COLLECTION OF PERMIT FEES OR TAXES TO ANY OTHER AGENCY OR INDEPENDENT CONTRACTOR.
- e. UNLESS EXPRESSLY INCLUDED IN THIS CHAPTER, THE PERMITTING AGENCY MAY ESTABLISH GOVERNING RULES TO FURTHER THE PURPOSE OF THIS CHAPTER AS LONG AS THOSE RULES TO NOT BROADEN THE RIGHTS CREATED BY THIS CHAPTER.

4.0 FUNDING

- a. THE COMMISSION ESTABLISHED BY THE TABC SHALL HAVE SUFFICIENT FUNDS APPROPRIATED TO IT EITHER:
 - 1) FROM THE BUDGET OF THE TABC, OR
 - 2) BY A LEGISLATIVE APPROPRIATION, OR
 - 3) BY A COMBINATION OF THE TABC'S BUDGET AND LEGISLATIVE APPROPRIATION.

5.0 SEPARATE PERMIT REQUIRED

- a. A SEPARATE PERMIT SHALL BE REQUIRED FOR A PARTY THAT GROWS MARIJUANA, FOR A PARTY THAT SELLS MARIJUANA, AND FOR A PARTY THAT BOTH GROWS AND SELLS MARIJUANA.

6.0 ACTIVITIES REQUIRING PERMIT

- a. NO PERMITTEE MAY CONDUCT ACTIVITY IN RELATION TO THE SALE OR GROWTH OF MARIJUANA THAT IS NOT SPECIFICALLY ALLOWED BY THE PERMIT THAT HAS BEEN GRANTED TO THEM UNDER THIS CHAPTER. NO PERMITTEE WHO HAS NOT FIRST OBTAINED A PERMIT OF THE TYPE REQUIRED FOR THE PRIVILEGE EXERCISED MAY DO ANY OF THE FOLLOWING:
 - 1) GROW, HARVEST, PACKAGE, TRANSPORT, DISTRIBUTE, SELL, POSSESS FOR THE PURPOSE OF SALE, OR STORE MARIJUANA; OR
 - 2) SOLICIT OR TAKE ORDERS FOR MARIJUANA.
- b. A PERMITTEE MAY HARVEST, PACKAGE, TRANSPORT, DISTRIBUTE, SELL, POSSESS FOR THE PURPOSE OF SALE, STORE, SOLICIT OR TAKE ORDERS FOR MARIJUANA IF THOSE ACTIVITIES ARE NECESSARY TO FULFILL THE PURPOSE OF THEIR PERMIT.
- c. A PERMITTEE GRANTED A PERMIT FOR THE PURPOSES OF GROWING MARIJUANA ONLY SHALL BE PERMITTED TO TRADE WITH OTHER PERMITTEES.

7.0 NATURE OF PERMIT

- a. THE PERMITTEE OF A PERMIT UNDER THIS SECTION MAY BE A NATURAL PERSON OR LEGAL ENTITY. THE PERMIT CANNOT PASS BY DEATH, DESCENT, OR BEQUEST TO ANOTHER NATURAL PERSON.
- b. THE PERMITTEE SHALL BE HELD RESPONSIBLE FOR THE ACTS AND OMISSIONS THAT TAKE PLACE AS A RESULT OF THE POWERS GRANTED BY PERMITS UNDER THIS CHAPTER.

- c. A PERMIT UNDER THIS SECTION IS NON-TRANSFERABLE FOR ANY REASON.
- d. A PERMIT GRANTED UNDER THIS SECTION SHALL ESTABLISH THE AMOUNT OF MARIJUANA THAT IS PERMITTED TO BE GROWN AND/OR SOLD AT THE PERMITTED LOCATION.
- e. A PERMITTEE MUST KEEP RECORD OF WHERE THE MARIJUANA WAS PURCHASED FROM AND IN WHAT QUANTITIES. THOSE RECORDS MUST BE KEPT IN THE REGULAR COURSE OF BUSINESS AND BE CAPABLE OF BEING PRODUCED IMMEDIATELY AT THE REQUEST OF THE PERMITTING AGENCY.

8.0 EXPRESS PROHIBITIONS

- A. A PERSON COMMITS A VIOLATION OF THIS CHAPTER IF THEY:
 - 1) SELL MARIJUANA TO A PERSON UNDER THE AGE OF 21,
 - 2) CONSUME MARIJUANA ON THE PERMITTED PREMISES,
 - 3) SELL MARIJUANA WHERE ALCOHOL IS SOLD,
 - 4) SELL MARIJUANA AT A NON-PERMITTED LOCATION,
 - 5) SELL MARIJUANA WHERE IT IS OTHERWISE PROHIBITED,

9.0 GENERAL PROHIBITIONS

- a. NO PERMITTEE SHALL BE PERMITTED TO TREAT, MODIFY, ALTER, OR TAMPER WITH, THE PLANT SEEDS, THE PLANT DURING THE GROWTH STAGES, OR THE PLANT AFTER HARVEST, IN ORDER TO INCREASE OR DECREASE THE MARIJUANA'S POTENCY.
- b. NO SELL-ONLY PERMITTEE SHALL ACCEPT, AS A FORM OF PAYMENT, ANY CREDIT CARDS, STATE OR FEDERAL ASSISTANCE OF FUNDS, OR ANY OTHER TYPE OF PAYMENT THAT IS NOT CASH, DEBIT, OR PERSONAL CHECK.
- c. A VIOLATION OF THIS SECTION IS PUNISHABLE BY FINES ESTABLISHED BY THE PERMITTING AGENCY AND POSSIBLE PERMIT SUSPENSION OR REVOCATION.

10.0 LOCAL PROHIBITIONS

- a. A COUNTY OR CITY IN THIS STATE SHALL BE PERMITTED TO PROHIBIT THE GROWTH, SALE, OR GROWTH AND SALE OF MARIJUANA IF SO DESIRED.
- b. THE COUNTY OR CITY MUST TAKE SUCH ACTION THROUGH ITS GOVERNING BODY UNDER ITS APPLICABLE RULES. A COUNTY'S RIGHT TO PERMIT MARIJUANA GROWTH OR SALES IS SUPERSEDED BY THE CITY'S RIGHT TO ALLOW GROWTH OR SALE.
- c. THE COUNTY OR CITY MAY NOT GRANT A PERMITTEE BROADER RIGHTS THAN WHAT IS ALLOWED BY THE STATE.
- d. THE COUNTY OR CITY MAY NOT PARTIALLY LIMIT OR PARTIALLY ALLOW RIGHTS CONFERRED TO A PERMITTEE GRANTED UNDER THIS CODE.

11.0 PERMIT REQUIREMENTS

- a. A PERMIT GRANTED UNDER THIS SECTION MUST PROVIDE FOR OR LIMIT THE FOLLOWING:
 - 1) THE TYPE OF ACTIVITY PERMITTED; GROW, SELL, OR GROW AND SELL, AT THE LOCATION,
 - 2) THE AMOUNT OF MARIJUANA PERMITTED TO BE GROWN, SOLD, OR GROWN AND SOLD AT THE PERMITTED LOCATION BY THE PERMITTING AGENCY,
 - 3) EFFECTIVE AND EXPIRATION DATES.
- b. THE PERMIT SHALL BE DISPLAYED PROMINENTLY TO THE PUBLIC AT THE PERMITTED LOCATION AND CONTAIN THE FOLLOWING INFORMATION:
 - 1) NAME OF THE PERMITTEE,
 - 2) ADDRESS OF THE PERMITTED LOCATION WHERE THE GROWTH OR SALE OF MARIJUANA TAKES PLACE,
 - 3) TYPE OF ACTIVITY PERMITTED: GROW, SELL, OR GROW AND SELL, AT THE LOCATION,
 - 4) EFFECTIVE DATE OF THE PERMIT,
 - 5) EXPIRATION DATE OF THE PERMIT,
 - 6) QUANTITIES PERMITTED TO BE GROWN, SOLD, OR GROWN AND SOLD AT THE LOCATION,
 - 7) THE NUMBER OF EMPLOYEES EMPLOYED AT THE LOCATION.
 - 8) ANY OTHER INFORMATION DEEMED NECESSARY BY THE PERMITTING AGENCY.

12.0 VIOLATION OF THIS CHAPTER

- a. A PERSON WHO VIOLATES AN ADMINISTRATIVE RULE ESTABLISHED BY THE PERMITTING AGENCY AS RESULT OF THIS CHAPTER COULD BE SUBJECT TO CRIMINAL PROSECUTION WITH A MINIMUM FINE OF \$100 BUT NOT MORE THAN \$1,000 AND CONFINEMENT UP TO ONE YEAR.
- b. THE FIRST VIOLATION BY AN INDIVIDUAL OF AN EXPRESS PROHIBITION IN SECTION 8.0 (A) (1), (2), OR (3), OF THIS CHAPTER IS A CLASS C MISDEMEANOR AND IS SUBJECT TO PUNISHMENT UNDER CHAPTER 12, SUBCHAPTER B, SECTION 12.23 OF THE TEXAS PENAL CODE.
- c. THE SECOND VIOLATION BY AN INDIVIDUAL OF AN EXPRESS PROHIBITION IN SECTION 8.0 (A) (1), (2), OR (3) OF THIS CHAPTER IS A CLASS B MISDEMEANOR AND IS SUBJECT TO PUNISHMENT UNDER CHAPTER 12, SUBCHAPTER B, SECTION 12.22 OF THE TEXAS PENAL CODE.
- d. THE FIRST VIOLATION BY AN INDIVIDUAL OF AN EXPRESS PROHIBITION IN SECTION 8.0 (A) (4) OR (5) OF THIS CHAPTER IS A CLASS C MISDEMEANOR AND IS SUBJECT TO PUNISHMENT UNDER CHAPTER 12, SUBCHAPTER B, SECTION 12.23 OF THE TEXAS PENAL CODE.
- e. ANY ADDITIONAL VIOLATION BY AN INDIVIDUAL OF AN EXPRESS PROHIBITION IN SECTION 8.0 OF THIS CHAPTER IS A STATE JAIL FELONY AND IS SUBJECT TO PUNISHMENT UNDER CHAPTER 12, SUBCHAPTER C, SECTION 12.35 OF THE TEXAS PENAL CODE

COMMENTARY

1.0 DEFINITIONS

- a. The definition for “marijuana” under this chapter is written so that it includes the actual marijuana plant and the intoxicating compound that is THC oil. Synthetic variations of marijuana are included in order to further regulate the marijuana market. It is possible that as actual marijuana is legalized the demand for the synthetic varieties will be reduced. However, considering that synthetic marijuana has substantially the same or similar effects as actual marijuana, they should be regulated by the same permits. The wording “...other similar substance or plant...” is put in as a ‘catch all’ because it could be overly exhaustive and time consuming for the legislature to list every single substance that could possibly be sold as a result of marijuana plant production. Instead, the permitting agency is left to use its expertise in determining what other substances are similar to marijuana
- b. “Processed Marijuana” is included because of the marijuana plant’s multiple uses. Marijuana can be altered by cooking, cutting, or diluting it to form a number of substances. A popular concoction is to include the THC oil from marijuana in baked goods or other edible forms. If an enterprising individual were to sell the baked goods they may attempt to circumvent the permitting process by claiming that the baked good is not marijuana in the traditional plant form. Without a doubt, a baked good that included THC would be a “similar” substance to marijuana. Also, it is important to note that the definition as written does not describe a minimum or maximum quantity of marijuana; it must only contain some marijuana.
- c. The “Permittee” is eligible to be any legally recognized entity of this state because it is possible that corporations or other similar entities will be able to afford large-scale marijuana production upon legalization. However, as growers and sellers of marijuana are learning in California, the additional funding sources are coming from individual venture capitalists and crowd funding sources as well. <http://features.blogs.fortune.cnn.com/2013/03/21/business-of-marijuana/>. The state could also face a Constitutional Equal Protection battle if it excludes corporations.

2.0 PURPOSE

- a. This section is used to provide broad discretion to the permitting agency in the regulation of marijuana. The purpose of providing such broad discretion to the permitting agency is to ensure proper implementation and execution of the rules and regulations. There are some requirements of the permitting agency established by statute, such as permit requirements in Section 11.0. The requirements are put into place to ensure consistency between the different types of permits that will be granted.

3.0 PERMITTING AGENCY

- a. The Texas Alcoholic Beverage Commission’s purpose is to regulate the sale, distribution, and manufacture of alcohol in Texas.
- b. The reasons that the TABC was selected as the regulatory agency is because many of the duties that the TABC is already charged with in relation to alcohol will be identical or very similar to those needed in the regulation of marijuana. Those existing duties

include approval of permits and licensing for alcohol, inspection of alcohol facilities, collection of fees and taxes, prosecution of violators and seizure of illegal alcohol, labeling standards, and passage of additional rules. TEX. ALC. AND BEV. CODE § 5.31, 5.33, 5.35, 5.36, 5.361, 5.37. Considering the similarities of the marijuana and alcohol industries with respect to sale and distribution, could see why the TABC is the best suited agency for marijuana rules. Many of the duties listed in Section 3.0 (a) (1-6) are similar to those of the Alcoholic Beverages Code.

- c. Hiring, training, and supporting personnel in any new venture can be difficult, this new legislation will not be any different. Since the marijuana legislation will be so similar to the Alcohol and Beverage Code and the TABC's rules, it is important to acknowledge and permit the use of existing TABC employees by the new marijuana commission.
- d. State agencies often delegate duties. The TABC or new marijuana commission may not have all of the resources immediately available to monitor and police the new permittees. Those duties could be delegated to an enforcement agency within their jurisdiction. The listed non-delegable duties—permit fee and marijuana tax collection—are kept under the watchful eye of the TABC for two reasons. The first is to prevent accidental permit denial or approval for permit fees that may get misappropriated through a different government agency. The second reason is to ensure that there is proper accounting under the permitting agency for funding, planning and budgetary purposes.

4.0 FUNDING

- a. Funding sources for new legislation are constantly in the news. The language “...shall have sufficient funds appropriated...” is put into place to curb any possible confusion as to where the funds will be coming from. The term “shall” is purposefully put in place instead of “may” in order to eliminate any possible ways for the legislature to escape the ultimate purpose of the chapter. The special commission shall be funded by the legislature because without it there will be no one to establish rules for the permitting and regulation of marijuana.

For fiscal year 2011, the TABC was appropriated almost \$48 million. An additional \$1.3 million came from federal revenues. The fiscal year for the TABC runs from September 1 to August 31 of the following year. At the end of fiscal year 2011 the TABC had a cash surplus of approximately \$1.8 million, according to the TABC Fiscal Year 2011 Report,

http://www.tabc.state.tx.us/publications/agency_report_archives/AFR2011.pdf A surplus of \$1.8 million will make it very difficult for the TABC to individually fund a new commission devoted solely to marijuana. It is also important to note that given the current conflict with federal law and the proposed legislation that none of the federal funds could be used to further the goals of the marijuana commission. However, with proper planning, the TABC could include funding for the special commission in a future budget proposal for their appropriation. Additionally, a separate legislative appropriation is always an option, which could prove to be a very desirable approach when auditing occurs to help simplify matters. Specifically in Texas, since the appropriation will come from the state treasury, The House Appropriation Committee will have to approve and comment on it before the appropriation could move on to the House and Senate. <http://www.house.state.tx.us/committees/committee/?committee=030>

5.0 SEPARATE PERMIT REQUIRED

- a. The activities listed in this section encompass three main areas: growing marijuana, selling marijuana, or growing and selling marijuana. The growth of marijuana, like any agricultural product, will have several phases and processes that are incidental to its growth process. Planting, maintaining, and harvesting are examples of some of the different phases of the process. It is fair to assume for permitting purposes that once the plant is harvested that the growing phase is done. Once the plant is harvested, there is potential for confusion of exactly how far the “growing” permit reaches. In other words, after the plant is harvested how much activity is incidental to the growing process? To eliminate any confusion, the processing should be allowed to be done by either the permittee that grows or sells the marijuana. This could prove to be beneficial to the growing permittee as well as the seller permittee. Additionally, since the processing that takes place could result in marijuana going into certain edible items, such as baked goods, there are various departments of health and other agencies that could help regulate the processing activities. One other option is to allow the permitting agency to make an additional classification as a ‘processor’ or similar name. That designation could be something that is granted to a permittee as long as they meet certain requirements to ensure they process the marijuana that is suitable for smoking or ingestion.

6.0 ACTIVITIES REQUIRING PERMIT

- a. The activities listed in this section are listed as a non-exhaustive list of activities that are incidental to the marijuana industry. The transporting and packaging of marijuana is necessary in order for the market to thrive. The solicitation and order taking for marijuana is not limited to a specific type of permittee. A grow-only permittee or a sell-only permittee still has to sell their product. The difference is that a grow-only permit’s right to solicit sales is limited by subsection (c) (2) of this section.
- b. This subsection is important because it acknowledges in the statute that there are activities incidental to the rights granted by the permit, and while those incidental rights are necessary, they at some point have an end. The end of the incidental rights is when the permit’s purpose is fulfilled, i.e.: a permitted grower has sold their marijuana to another permittee. Likewise, a sell-only permittee would have no reason to have a warehouse set up with an irrigation systems or high intensity discharge lighting; equipment that is synonymous with growing marijuana. Such activity by a seller could provide the permitting agency and law enforcement officials with an inference that the permittee is going beyond the scope the permit they have been granted.
- c. As written, the statute defines a ‘sale’ of marijuana as a retail transaction. That would be of no benefit to the permittee who has grow-only permit. This subsection is necessary to facilitate the sale between a grow-only permittee and other permittees. On its face, this may seem to be an unfair or impractical market control. However, several other industries have similar types of regulations. For instance, Chapter 25, 26 and 28 of the Texas Alcoholic Beverage Code mandates separate licenses to sell beer and wine or beer, wine, and liquor. Under Chapter 29 and 30 of that same code, some of those licenses even are contingent upon what time of day sales can take place.

7.0 NATURE OF THE PERMIT

- a. It is important to remember that any business that begins by being granted a permit under this chapter will be a start-up, meaning that they will be beginning from scratch. Start-up businesses are inherently risky and can fail for a number of reasons. One risk can be the need for new funding sources. Generally speaking, corporations have more availability to funds that will help finance the rapid growth. Corporations, whether private or public, have the ability to raise funds through stock or bonds, as well as traditional funding options such as bank loans. However, the latter option may be difficult due to the current conflict with this chapter and federal laws. Federal law still prohibits the possession and sale of marijuana. The risk of loss associated with federal forfeiture of assets could prove to be a deterrent of loans by banks that are inherently risk adverse. Another option would be for the bank to require a personal guarantee from the permittee or other responsible party that, upon some type of federal or regulatory action, the person who has guaranteed the loan will be responsible for the principal. However, if a bank is seeking a personal guarantee from an individual then there is little benefit to having the corporation as the permittee for purposes of this chapter.
- b. The main purpose to allow a corporation as a permittee under this chapter is the same as allowing the corporate structure in other business; to limit legal liabilities of the owners and managers of the business. This subsection provides that the permittee will be the one responsible for the conduct performed as a result of this chapter. Placing potential liability, for example liability in tort, on the permittee will ensure 1) the permittee knows where their liability lies at the outset, and 2) will provide guidance for the courts in applying the law. If a permittee finds themselves as a defendant they will know what kind of exposure they will be facing almost immediately. For instance, if they are sued because of allegedly selling marijuana that caused a person to become ill. If the permittee is a corporate defendant then the courts could apply general corporate law principles that would place the potential liability on the corporation. If the permittee is a sole proprietorship or a partnership, then courts will be able to apply general tort law or partnership principles and the individual owners and/or partners could face liability.
- c. Non-transferability is necessary to ensure that the state and regulators know who the permittees are. Allowing a market for the sale and transfer of permits could undermine the ability of the permitting agency to regulate the marijuana market.
- d. Permits can be used as a tool by the government to regulate a market. Similar types of permit structures and allowance are used in the regulation of the oil and gas business. In Texas, the Texas Railroad Commission establishes a proration schedule of how much oil or gas may be extracted from a given well, field, or even an entire formation as a proportion to the entire distribution of product. TEX. NAT. RES. CODE § 86.042 A proration schedule serves multiple purposes including increasing competition and helping to maintain a relatively consistent price for the product by adjusting supply as a response to demand.

A similar principal of proration can be established in the growing and selling of marijuana, but there may be some difficulties in doing so. Considering marijuana was a previously illegal substance and it is doubtful that most prior sellers of it kept accurate

sales data. It may prove to be difficult, if not impossible, to determine exactly what the historical demand of marijuana has been. As a solution, the permitting agency may have to allow flexibility in the early months or years of the permit's allowable amounts to be sold.

One way to establish some sort of proration schedule is to base it off census data for population in a given area. The area could be as small as a zip code or as large as a county. It would provide that only a certain number of selling permittees could be allowed in a given area. The purpose of keeping track of distribution is to keep the monitoring of marijuana sales within the state control. If the tracking of the amount of marijuana sold is not done it could result in operations that are unpermitted, which would allow for the black market for marijuana to continue thriving. Those black markets would not have to adhere with accompanying health and safety requirements of potential marijuana legislation, and likely will be capable of selling their unregulated product at a cheaper price. Additionally, the state would miss out on important tax revenues from the sales.

- e. Additional tracking of a permittee's product purchases and sales can be done by requiring them to keep a manifest of their marijuana purchases and sales. For grow-only permittees this can mean documenting the amount of seeds that are purchased, because the definition of marijuana under this chapter does include seeds, and require them to document how much harvested product is sold. The permitting agency should be able to recognize whether or not the amount of marijuana sold to the proportion of seed purchased is consistent. There also arises the problem of grow-only permittee harvesting their seeds for future production. This can be combated by also requiring grow-only permittees to document their total amount of plants. Upon inspection by the permitting agency should be able to ascertain the total amount of marijuana sold to the proportion of plants the permittee had at harvest.

8.0 EXPRESS PROHIBITIONS

- a. These express prohibitions are subject to civil and criminal penalty under the Texas Penal Code, which is listed and referenced in Section 12.0 of this chapter, if violated by a person. The main focus of this section is to regulate the retail sales. "Person" is used in here in place of permittee because the permittee will not necessarily always be the one selling the product to consumers. It is foreseeable that a permittee's operation would be so large that he would need to hire additional employees. Likewise, if a permittee was the corporation it will be difficult to prosecute or incarcerate the corporation. An employee of the corporation should be culpable and be subject to criminal prosecution if they violate one of the provisions of this section.

Additionally, subsections (a) (4) and (5) prohibit the unpermitted sale of marijuana and the sale of marijuana at an unpermitted location. These acts are essentially the same as currently illegal marijuana sales. Accordingly, in section 12.0 (d) the penalties for these acts are increased from the other express prohibitions.

9.0 GENERAL PROHIBITIONS

- a. This subsection is meant to keep the marijuana as a natural and organic plant free of modification or chemically induced mutation. In broad terms, the purpose of this chapter

is to monitor the distribution of marijuana. If that purpose is to be fulfilled it there should be limits on what exactly can be done to the plant so that the distribution does not get out of control and the types of marijuana does not vary in to an extreme extent. Innovation will naturally lead to stronger and more potent forms of marijuana. However, that innovation must not come at a price that puts the consumer at risk with overly potent marijuana. Likewise, consumers will not unwittingly want to buy a ‘watered down’ version of marijuana, which is why this subsection expressly prohibits the reduction of the marijuana’s potency as well.

- b. This prohibition is similar to many vice type statues that prohibit the use of credit, such as the Texas Lottery. See, TEX. GOVT. CODE § 466.3052 (a). This is placed in this chapter as a statutory provision of the utmost importance to limit the availability of marijuana to people who are impoverished or otherwise cannot afford it.
- c. The consequences for violation of these general provisions should be imposed by the permitting agency because of their ability to keep track of a permittee’s and violations.

10.0 LOCAL PROHIBITION

- a. This chapter grants the right to marijuana growth and sales state wide. However, because marijuana’s usefulness and acceptance is still a hotly contested issue this subsection provides counties and cities with the discretion to limit what marijuana activities, if any, take place in their jurisdiction. This is similar to the Texas Alcohol and Beverage Code Chapter 251 “Local Option Status” where a county or city can elect to allow alcohol sales. Additionally, this subsection may be a valuable “bargaining chip” at the state legislative level in getting the bill passed. If a representative or senator believes that their constituents will have an issue with marijuana being available, their constituents still have the power to prohibit marijuana in their community.
- b. This provision is in place to ensure that the county or city adheres to their administrative and procedural rules in passing resolutions an ordinance. For instance, at the county level an ordinance will likely have to go before the Commisioner’s Court and the ultimate decision would be enforced by the Sheriff. The city would likely have to go before the City Council and mayor for approval, with the enforcement being done by the city’s police.

The last sentence of this subsection is in place to avoid potential conflict of a county prohibiting but a city allowing marijuana growth or sale. Some counties have a major metroplex whose ideals and morals vary greatly from those in the metroplex’s suburbs, or the county’s outlying city’s. Allowing a city to have the right to self-regulate around the county ensures that the residents of that city have the autonomy to exercise their ideals and morals.

Also, if a county prohibits the sale or growth of marijuana but a city within that county allows it, a geographical market control is created. The demand will be confined to the city limits, not county limits, which could result to a larger number of grower and sellers confined to the city, which in turn could increase competition. With greater competition in free market prices typically remain low and quality of the product remains generally high.

- c. This subsection, as well as subsection (d) that follows, is to ensure that no matter what type of resolution or ordinance is permitted by the local jurisdiction the right granted by the permit ultimately control.

11.0 PERMIT REQUIREMENTS

- a. This subsection stipulates that there must be a designation that the permit is either grow, sell, or grow and sell. Effective and expiration dates on a permit are important so that the permitting agency, upon inspection, knows that the permit is current and that the permittee is in compliance with the permit's requirements.
- b. A requirement that the permit be prominently display will serve as a signal to the permitted agency's inspectors that the permittee is aware of the applicable laws of this chapter as well as other related marijuana regulations. The lists of subsections 1-7 are to serve as a guide to the permitting agency of what needs to be included on the permit. Subsection 8 provides the permitting agency with extra discretion for provision or items it finds necessary to put on the permit.

12.0 VIOLATION OF THIS CHAPTER

- a. There is an identical provision to this one in Chapter 1, Subchapter A, Section 1.05 of the Texas Alcoholic Beverage Code. This provision is intended to provide a penalty for individuals that violate a rule established by the special commission for marijuana regulation.
- b. Subsection (b) thru (e) provides for punishment and escalations of punishments for repeat offenders.

STATUTE 2

§ 1 DEFINITIONS – FOR THE PURPOSES OF THIS SECTION:

- (A) THE WORD “SELL” SHALL MEAN WHEN A PERSON RECEIVES MONEY OR OTHER VALUABLES IN EXCHANGE FOR MARIJUANA FROM ANOTHER PERSON.
- (B) THE WORD “PERSON” SHALL MEAN ANY NATURAL PERSON, ORGANIZATION, CORPORATION OR ENTITY ORGANIZED UNDER THE LAWS OF ANY STATE.
- (C) THE WORD “MARIJUANA” SHALL HAVE THE SAME MEANING AS IN 21 USCS §802.
- (D) THE WORD “PURCHASE” SHALL MEAN WHEN A PERSON PROVIDES MONEY OR OTHER VALUABLES IN EXCHANGE FOR MARIJUANA.
- (E) AN “AUTHORIZED SELLER” IS SOMEONE WHO IS CERTIFIED TO SELL MARIJUANA PER SECTION §2.003
- (F) THE TERM “MANUFACTURE” AND “MANUFACTURER” SHALL HAVE THE SAME MEANING AS IN 21USCS §802.
- (G) THE TERM “PRODUCTION” SHALL HAVE THE SAME MEANING AS IN 21USCS §802.

§ 2 – APPLICATION FOR AND ISSUANCE OF PERMITS

§2.001 – PERMIT REQUIRED

- (A) NO PERSON WHO HAS NOT FIRST OBTAINED A PERMIT OF THE TYPE REQUIRED FOR THE PRIVILEGE EXERCISED MAY DO ANY OF THE FOLLOWING:
 - (1) MANUFACTURE, GROW, SELL, POSSESS FOR THE PURPOSE OF SALE, IMPORT INTO ANOTHER STATE, EXPORT FROM ANOTHER STATE, TRANSPORT, DISTRIBUTE, WAREHOUSE, OR STORE MARIJUANA;
 - (2) SOLICIT OR TAKE ORDERS FOR MARIJUANA; OR
 - (3) PREPARE FOR THE PURPOSE OF SALE, PACKAGE, RECTIFY, BLEND, TREAT, FORTIFY, MIX, OR PROCESS MARIJUANA.
- (B) A PERSON MAY MANUFACTURE, GROW, PACKAGE, IMPORT, EXPORT, TRANSPORT, DISTRIBUTE, WAREHOUSE, STORE, POSSESS, POSSESS FOR THE PURPOSE OF SALE, RECTIFY, BLEND, TREAT, FORTIFY, MIX, OR PROCESS MARIJUANA, OR POSSESS EQUIPMENT OR MATERIAL DESIGNED FOR OR CAPABLE OF USE FOR MANUFACTURING MARIJUANA, IF THE RIGHT OR PRIVILEGE OF DOING SO IS GRANTED BY THIS CODE.
- (C) A RIGHT OR PRIVILEGE GRANTED BY THIS SECTION AS AN EXCEPTION TO PROHIBITIONS CONTAINED ELSEWHERE IN THIS CODE MAY BE EXERCISED ONLY IN THE MANNER PROVIDED. AN ACT DONE BY A PERSON WHICH IS NOT PERMITTED BY THIS CODE IS UNLAWFUL.

(D) A SEPARATE PERMIT IS REQUIRED FOR EACH SEPARATE LOCATION OF THE BUSINESS.

(E) THE FEE FOR A PERMIT SHALL BE \$500 FOR THE INITIAL YEAR, AND \$200 FOR THE RENEWAL.

(F) THE PERMIT SHALL BE RENEWED YEARLY.

§2.002 – GENERAL GROUNDS FOR REFUSAL OF A PERMIT.

(A) THE SECRETARY OF STATE MAY REFUSE TO ISSUE AN ORIGINAL OR RENEWAL PERMIT WITH OR WITHOUT A HEARING IF IT HAS REASONABLE GROUNDS TO BELIEVE AND FINDS THAT ANY OF THE FOLLOWING CIRCUMSTANCES EXISTS:

(1) THE APPLICANT, OR A CLOSE FAMILY MEMBER, HAS BEEN CONVICTED IN A COURT OF COMPETENT JURISDICTION OF THE VIOLATION OF ANY PROVISION OF THIS CODE DURING THE TWO YEARS IMMEDIATELY PRECEDING THE FILING OF HIS APPLICATION;

(2) 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;

(3) WITHIN THE SIX-MONTH PERIOD IMMEDIATELY PRECEDING HIS APPLICATION THE APPLICANT, OR A CLOSE FAMILY MEMBER, VIOLATED OR CAUSED TO BE VIOLATED A PROVISION OF THIS CODE OR A RULE OR REGULATION OF THE COMMISSION WHICH INVOLVES MORAL TURPITUDE, AS DISTINGUISHED FROM A TECHNICAL VIOLATION OF THIS CODE OR OF THE RULE;

(4) THE APPLICANT FAILED TO ANSWER OR FALSELY OR INCORRECTLY ANSWERED A QUESTION IN AN ORIGINAL OR RENEWAL APPLICATION;

(5) THE APPLICANT IS INDEBTED TO ANY STATE OR THE FEDERAL GOVERNMENT FOR ANY TAXES, FEES, OR PAYMENT OF PENALTY IMPOSED BY THIS CODE OR BY RULE OF THE COMMISSION;

(6) 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;

(7) THE APPLICANT IS NOT OF AGE TO PARTAKE IN THE USE OF MARIJUANA;

(8) THE PLACE OR MANNER IN WHICH THE APPLICANT MAY CONDUCT HIS BUSINESS WARRANTS THE REFUSAL OF A PERMIT BASED ON THE GENERAL WELFARE, HEALTH, PEACE, MORALS, AND SAFETY OF THE PEOPLE AND ON THE PUBLIC SENSE OF DECENCY;

(9) THE APPLICANT IS IN THE HABIT OF USING MARIJUANA, ALCOHOL TO EXCESS OR HAS BEEN CONVICTED OF USING ILLEGAL SUBSTANCES WITHIN THE LAST FIVE YEARS.

(10) THE APPLICANT WAS CONVICTED OF SELLING OR POSSESSING MARIJUANA DURING THE PERIOD IN WHICH IT WAS CONSIDERED A PROHIBITED SUBSTANCE WITHIN THE LAST FIVE YEARS.

- (11) THE APPLICANT IS MENTALLY INCAPACITATED;
- (11) THE APPLICANT IS NOT A UNITED STATES CITIZEN;
- (12) THE APPLICANT DOES NOT PROVIDE AN ADEQUATE BUILDING AVAILABLE AT THE ADDRESS FOR WHICH THE PERMIT IS SOUGHT BEFORE CONDUCTING ANY ACTIVITY AUTHORIZED BY THE PERMIT;
- (13) THE APPLICANT IS RESIDENTIALLY DOMICILED WITH A PERSON WHOSE PERMIT OR LICENSE HAS BEEN CANCELLED FOR CAUSE WITHIN THE 12 MONTHS IMMEDIATELY PRECEDING THE DATE OF HIS PRESENT APPLICATION;
- (14) THE APPLICANT HAS FAILED OR REFUSED TO FURNISH A TRUE COPY OF HIS APPLICATION TO THE COMMISSION'S DISTRICT OFFICE IN THE DISTRICT IN WHICH THE PREMISES FOR WHICH THE PERMIT IS SOUGHT ARE LOCATED; OR
- (15) DURING THE SIX MONTHS IMMEDIATELY PRECEDING THE FILING OF THE APPLICATION THE PREMISES FOR WHICH THE PERMIT IS SOUGHT HAVE BEEN OPERATED, USED, OR FREQUENTED FOR A PURPOSE OR IN A MANNER THAT IS LEWD, IMMORAL, OR OFFENSIVE TO PUBLIC DECENCY.

§ 2.003 – AUTHORIZED SELLER- AN AUTHORIZED SELLER IS SOMEONE WHO MEETS THE BELOW REQUIREMENTS.

- (A) PERMITTED BY THE SECRETARY OF THE STATE
- (B) THIS APPLIES TO PEOPLE WHO SELL TO AN INDIVIDUAL AS WELL AS PRODUCERS WHO SALE TO AUTHORIZED RESELLERS.
- (C) MUST COMPLY WITH ALL STATE AND FEDERAL LAWS REGARDING THE SALE OF MARIJUANA.
- (D) MUST KEEP RECORDS OF HOW MUCH IS SOLD TO AN INDIVIDUAL OR AN AUTHORIZED RESELLER.
- (E) MUST PAY SALES TAX ON A SEMI-ANNUAL BASIS FOR ALL MARIJUANA SOLD OR KEPT IN STOCK FOR LONGER THAN A STANDARD PERIOD OF TIME.

§2.004 – AUTHORIZED MANUFACTURER – AN AUTHORIZED MANUFACTURER IS SOMEONE WHO MEETS THE BELOW REQUIREMENTS. SOMEONE MAY BE BOTH A MANUFACTURER AND A SELLER BASED ON THE PERMIT THEY REQUEST.

- (A) PERMITTED BY THE SECRETARY OF THE STATE
- (B) MUST COMPLY WITH STATE AND FEDERAL LAWS REGARDING THE SALE OF MARIJUANA
- (C) MUST KEEP RECORDS OF HOW MUCH MARIJUANA IS MANUFACTURED AND SOLD TO AN INDIVIDUAL OR AN AUTHORIZED RESELLER
- (D) MUST PAY SALES TAX ON A SEMI-ANNUAL BASIS FOR ALL MARIJUANA SOLD OR KEPT IN STOCK FOR LONGER THAN A STANDARD PERIOD OF TIME.

- (E) MUST KEEP A RECORD OF THE QUANTITY, QUALITY, TYPE OF MARIJUANA GROWN.
- (F) MUST KEEP A RECORD OF ANY MARIJUANA BLENDING, LACING, ENHANCING THAT THEY PERFORM AS WELL AS THE GRADE OF THE MARIJUANA.
- (G) MUST KEEP A RECORD OF ANY CROPS THAT ARE DESTROYED BY NATURAL DISASTER, ANIMALS, HUMANS AND ANY PRODUCT STOLEN.
- (H) MUST GROW THE MARIJUANA IN A SAFE LOCATION, AND AWAY FROM EASY ACCESS TO PEOPLE UNDER AGE.

§2.005 – PERMITTING AGENCY – THE SECRETARY OF STATE SHALL BE THE PERMITTING AGENCY, AND, IF NECESSARY, MAY CREATE A COMMITTEE TO OVERSEE THE ISSUANCE, RENEWAL AND CANCELLATION OF PERMITS.

§2.006 – CANCELLATION OF PERMITS

- (a) A PERSON'S PERMIT MAY BE CANCELLED, OR COME UNDER REVIEW IF
 - (1) THE PERSON APPLYING FOR THE PERMIT HAS VIOLATED §2.002 OF THIS CODE.
 - (2) THE MARIJUANA IS SOLD CONTRAVENING THE LAWS OF THE STATE OR FEDERAL GOVERNMENT, OR THE ESTABLISHMENT DOES NOT PROPERLY DISPLAY THE REQUIRED WARNING SIGNS AND LABELS.
- (b) IF THE SECRETARY OF STATE DEEMS THE ESTABLISHMENT IN VIOLATION, THEY MAY CANCEL THE PERMIT OR PUT THE ESTABLISHMENT ON PROBATION FOR A MAXIMUM OF THREE MONTHS. AT THE END OF THE THREE-MONTH PROBATION PERIOD, THE SECRETARY MUST DECIDE WHETHER TO CANCEL, OR ALLOW THE ESTABLISHMENT TO KEEP THEIR PERMIT.

§3 – NO PRICE FIXING

§3.001 - THE SALE OF MARIJUANA SHALL NOT BE SUBJECT TO PRICE FIXING. THERE SHALL BE NO MONOPOLIES ALLOWED IN THIS INDUSTRY.

§4 – QUANTITY TO BE SOLD AT ONE TIME.

§4.001 – A MANUFACTURER MAY SELL LARGE QUANTITIES TO AUTHORIZED SELLERS FREE OF ANY SALES TAX SO LONG AS THE QUANTITY IS MORE THAN ONE OUNCE.

§4.002 – A SELLER MAY NOT SELL MORE THAN ONE OUNCE OF MARIJUANA TO AN INDIVIDUAL. THE SELLER MUST CHARGE SALES TAX TO THE INDIVIDUAL TO BE TURNED IN PER THE AGREED TAX SCHEDULE.

§4.003 – AN EXCEPTION SHALL BE MADE FOR THE CONSUMPTION AMOUNT FOR MEDICAL USES THAT ARE SEVERE. IF A DOCTOR HAS PRESCRIBED AN AMOUNT IN EXCESS OF THE AMOUNT LISTED ABOVE FOR A SEVERE MEDICAL CONDITION THEN THE SELLER IS ALLOWED TO FILL THE PRESCRIPTION.

(a) SEVERE MEDICAL CONDITIONS ARE CONDITIONS THAT COULD BE CONSIDERED LIFE THREATENING

§5 – AGE REQUIREMENT

§5.001 – A PURCHASER MUST BE AT LEAST TWENTY-FIVE YEARS OF AGE IN ORDER TO PURCHASE MARIJUANA.

§5.002 – EXCEPTIONS TO THE AGE REQUIREMENT

(a) SOMEONE UNDER THE AGE OF TWENTY-FIVE MAY PURCHASE MARIJUANA IF DOING SO FOR THEIR OWN MEDICAL PROBLEM IF THEY PROVIDE A DOCTOR'S PRESCRIPTION.

§6 – HEALTH WARNINGS

§6.001 – THE SECRETARY OF STATE SHALL REQUIRE THE HOLDER OF A PERMIT AUTHORIZING THE SALE OF MARIJUANA TO HAVE A WARNING SIGN IN THE WINDOW AND AT THE COUNTER OF THE ESTABLISHMENT THAT INFORMS THE PUBLIC OF THE EFFECTS OF MARIJUANA, PARTICULARLY, SLOWED REFLEXES AND THE POSSIBILITY THAT IT IS HABIT FORMING.

§6.002 – THE SECRETARY OF STATE SHALL REQUIRE THE HOLDER OF A PERMIT AUTHORIZING THE SALE OF MARIJUANA TO HAVE A WARNING SIGN ON EACH PACKAGE OF MARIJUANA LISTING THE POTENCY OF THE CONTENTS AS WELL AS ANY OTHER ITEMS THAT ARE INCLUDED OR LACE THE MARIJUANA.

§6.003 – THE SECRETARY OF STATE SHALL REQUIRE THE HOLDER OF A PERMIT AUTHORIZING THE SALE OF MARIJUANA TO HAVE A WARNING SIGN ON THE COUNTER TO INFORM THE PUBLIC OF THE RISKS OF PARTAKING IN MARIJUANA DURING PREGNANCY.

§7 – STRICT LIABILITY

§7.001 – THE SELLER AND/OR MANUFACTURER SHALL HAVE STRICT LIABILITY FOR ANY COMPLICATIONS THAT ARISE OUT OF IMPROPERLY LABELED MARIJUANA.

§7.002 – THE SELLER SHALL HAVE STRICT LIABILITY FOR ANY TORTS COMMITTED BY AN INDIVIDUAL UNDER 25 YEARS OF AGE TO WHOM THE SELLER SOLD MARIJUANA.

§7.003 – THE SELLER SHALL HAVE STRICT LIABILITY FOR THE ACTIONS OF ANYONE UNDER TWENTY-FIVE YEARS OF AGE WHO THEY SELL MARIJUANA.

Commentary

Section 1 – Definitions - The purpose of this section is to define clearly who is a seller, or reseller. Someone may be both a seller and a manufacturer. If the person grows the marijuana and sells it to individuals or resellers they are classified as both, as opposed to a seller who buys the marijuana from a manufacturer and then sells it to the public.

In defining ‘sell’ we wanted to ensure that people do not try to evade the law by a barter or trade system. You do not need to receive cash in exchange for selling, you simply need to receive something of value in exchange to be considered selling. Ex: Person A gives person B an umbrella valued at approximately \$5 in exchange for one eighth of an ounce of marijuana. This is still considered a sale. For consistency purposes, we are using the same terms used in other legislation currently in existence.

Section 2 – PERMITS - Permit Requirements - The requirement for a permit is to regulate the grade of marijuana being produced, sold and distributed. In a later section of this legislation, we will institute a strict liability policy for misrepresenting the grade and contents of the marijuana sold as well as for selling to people under age. The purpose of these two policies together is to ensure the safety of the product being produced and sold. The Secretary of State has the right to inspect the people permitted to ensure that they are complying with all laws that regulate the sale of marijuana.

A secondary purpose of this legislation is to ensure that the government is collecting the required sales taxes. The reason for requiring a separate permit for each location is to protect the business. If one location fails to follow the laws, their permit may be withdrawn, this does not mean that the permit for every location should be vacated. Also, there is the hope that the requirement for a separate permit for each location will stop companies from opening too many locations due to filing fees. The permit must be renewed yearly. This is to allow the Secretary of State a chance to deny a renewal for someone who has been delinquent in their duties to follow the law. It also gives the Secretary a chance to review the establishment if so desired before the renewal to ensure that the law is followed.

Grounds for Refusal – Permit Eligibility - This is not an exhaustive list of reasons to refuse to grant a permit. However, if the reason that the permit is not granted or renewed is not listed below, then the Secretary must hold a hearing and explain the reason for the refusal to permit or renew the permit. During this hearing the applicant shall have a chance to provide evidence to the contrary or to provide a reason for the practice on which the permit is being refused. While the list is not exhaustive, it does not mean that because a person has a characteristic listed below that the permit will not be issued or renewed. Ultimately, this right lies in the hands of the secretary of state. However, it is strongly advised that the permits are granted or denied on the same basis for all applicants.

The first three reasons for refusal to permit are related to the person's character. Given that marijuana was a controlled substance in this country at one point there is a high likelihood that criminals will attempt to request a permit to further their criminal enterprises. We do not wish to allow other substances, which are still illegal in this country, to be more easily attainable simply because marijuana is now legal. We wish to avoid the illegal selling of controlled substance along with the legal sale of marijuana, and therefore refuse to allow criminals to be permitted to sale marijuana. However, we do not wish to ban rehabilitated individuals from pursuing a viable career option, so there are time constraints on the length of time that an offense may be held against them.

The reason that a permit may be denied if the applicant's close family member has been convicted of a crime is to cancel out the possibility that the applicant is simply applying for the permit for the family member's benefit. Quite a few of the items relate to moral turpitude, character and reputation of the applicant. We do not wish to give an applicant a permit to sell marijuana if they are known to be immoral or violent. The selling of marijuana is a business that may draw people from criminal enterprises, and we do not wish for any violence to carry over into the legitimate sale of marijuana.

The applicant must be of age to partake in marijuana if he wishes to open a business to sell it; we do not want the applicant to be tempted, or influenced by the users of marijuana. However, we also do not want the applicant to be addicted to the use of marijuana to the point that it may inhibit his judgment, therefore a person who is addicted to substances may be denied a permit.

Permitting Agency - The Secretary of State may need to create an agency under his control to permit, renew, inspect and investigate the permit holders, as well as those who illegally sell marijuana. The size and existence of this agency is to be controlled by the Secretary of State. Any refusal to permit, renew or cancel permits is not reviewable by the courts. The hearing held by this agency is the only hearing that the applicant is permitted.

Manufacturing permit - The manufacturer has rules similar to that of a seller, however, since they are producing the marijuana they are responsible for keeping track of the grade, type, blending, etc. This is to ensure the quality of the marijuana. The manufacturer can be held strictly liable for mislabeling or misinforming the buyer of the true quality. This will work to keep the manufacturer responsible for their product, and ensure the safety of the public. The manufacturer should also take caution to grow the substance in a secure area away from the reach of people that are not of age to partake in the substance.

Permits to Sell - The reason that an authorized seller must keep track of sales to individuals separate from an authorized reseller is for purposes of paying taxes. Taxes must be paid on a semi-annual basis for marijuana sold to an individual or kept in stock longer than a standard period of time. If marijuana is sold to an authorized seller taxes do not need to be collected by the seller. The final sale will collect the taxes. If a seller partakes in marijuana of his own he must pay taxes for the amount that he would normally collect in a sale. The standard period of time referenced in this section is to be determined based on the typical time frame that it takes establishments in the area to sell marijuana, but in no instances longer than six months. Upon enactment of this statute the standard period of time shall be six months. One year after enactment of this law the Secretary of State shall determine the standard period of time based on the time frame for the preceding year. This time frame shall be assessed every two years. The reason for requiring taxes on items stored longer than the standard period of time is to stop overproduction, and therefore price decreases in the product. It is a way to hopefully cause the market to regulate itself.

Cancellation - The reason for this is to stop establishments that are violating the law. We do not want to have establishments that sell illegal drugs along with marijuana, or establishments that are not paying taxes, or not providing the proper notices and labels. The reason for the three-month probation period is to provide establishments with minor infractions time to remedy the infraction and keep their businesses. However, if the infraction is not remedied, then the Secretary of state may cancel the permit.

Section 3- PRICE FIXING - This is a recreational drug, we do not want for major companies to come into the market and fix prices amongst themselves to price out smaller businesses. All existing anti-monopoly laws apply to this industry.

Section 4 – QUANTITY LIMITS - The purpose of this section is to allow authorized sellers to buy large quantities of marijuana. The manufacturer must ensure that the seller has a permit, and must track the amount, grade, type, batch, etc. of marijuana sold. Taxes do not need to be collected at the time of a sale to an authorized seller for purposes of reselling. If a seller buys less than one ounce it is assumed it is for their personal recreational purposes and they must pay the sales tax at the time of purchase.

Taxes and Reporting - The purpose of this section is to ensure that a person is not illegally selling marijuana without the requisite permit.

Medical Exception - The purpose of this section is to ensure that those individuals who are prescribed marijuana for their illness are able to receive the requisite amount prescribed by the doctor.

Section 5 – AGE REQUIREMENTS - The reason that the age limit is set at twenty-five years old is a public safety measure. By the age of twenty-five people usually fully developed mentally and emotionally, hopefully this leads to less substance abuse problems. Also, by this age, people

usually have graduated from college, and are working on establishing their careers. This added responsibility usually allows people to be more responsible as they partake in marijuana.

Exceptions - The purpose of this section is to allow an exception to the age limitation for those who have medical prescriptions

Section 6 – WARNINGS - Warning Signs for Premises - The purpose of this section is to ensure that the public understands the side effects of and addictive nature of marijuana. Although it is legal, and we have raised the age of consumption to 25, we want to make sure that people understand that their health may be comprised by consumption. At the least, the person's reflexes will be diminished, and they should not be driving or operating heavy machinery.

Warning Labels - The purpose of this section is to ensure that the seller properly explains type of marijuana, as some versions are stronger than others. We do not want people who do not understand the grades of marijuana to think that all marijuana has the same strength and be overcome by the effects of it. It is also to ensure that if any other substances are used or mixed with the marijuana that they know of the contents. This statute ties in with the strict liability statute listed later.

Point-of-Sale Warnings - The purpose of this is to ensure that those who are pregnant understand that partaking in marijuana during pregnancy may harm their child. If the person still wishes to do so, then that is their choice.

Section 7 – LIABILITY - Strict Liability – Labeling. The purpose of this section is to ensure that the manufacturer and seller are properly labeling their marijuana. If someone is injured, due to the misrepresentation of the product the seller and manufacturer are to be held strictly liable for that persons' actions.

Example: Person A buys marijuana that is labeled as 'weak' or 'mild' with regards to its strength, when it is really a 'strong' version of marijuana. Person A, who has only ever smoked 'mild' marijuana then proceeds to smoke the same amount as he would normally smoke, when, he should smoke half of the percentage due to the strength. Person A decides to drive to the store and gets into an accident on his way there. The accident was caused by Person A's hallucination from the marijuana. The Seller would be strictly liable for Person A's injuries and any damage person A caused due to the accident. If the marijuana was correctly labeled and the same scenario happened, then the seller would not be liable because he performed his due diligence in warning the buyer.

Strict Liability – torts by customers under 25. The purpose of this section is to ensure that the manufacturer and seller are properly labeling their marijuana. If someone has an accident, is injured, injures another then the seller and manufacturer are to be held strictly liable for that persons' actions. This is to allow the person injured to recover from the Seller of the marijuana. Whether the purchaser and user of the marijuana is financially fit to pay the injured party, they may still go after the seller.

Example: Person A buys marijuana that is labeled as ‘weak’ or ‘mild’ with regards to its strength, when it is really a ‘strong’ version of marijuana. Person A, who has only ever smoked ‘mild’ marijuana then proceeds to smoke the same amount as he would normally smoke, when, he should smoke half of the percentage due to the strength. Person A decides to drive to the store and gets into an accident on his way there injuring Person B. The accident was caused by Person A’s hallucination from the marijuana. The Seller would be strictly liable for Person A’s and Person B’s injuries and any damage person A caused due to the accident. If the marijuana was correctly labeled and the same scenario happened, then the seller would not be liable because he performed his due diligence in warning the buyer

Strict Liability for harm to minors- The purpose of this section is to ensure that Sellers do not sell to people under the age required by the statute. Having strict liability is the best way to ensure that Sellers are diligent in checking the age of purchasers.

Example: Person A attempts to purchase one eighth of an ounce of marijuana from Seller. Person A provides an obviously fake license, which Seller recognizes as fake, but sales the marijuana anyway. Person A then commits a crime. Seller may be fined, or possibly imprisoned for person A’s actions

Example: Person A, who is twenty-five, purchases one eighth of an ounce of marijuana from Seller. Person A provides the required identification and Seller sales him the marijuana. Person A meets with Person B, who is twenty-three, and they smoke the marijuana together. Person A and Person B commit a crime. Seller is not responsible for either person’s actions. Seller sold the marijuana to Person A, who was of age, not to Person B.

Bibliography

2013 H.R. 499, 113 H.R. 499

2013 H.R. 501, 113 H.R. 501

Colo. Const. Art. XVIII, Section 16

21 USCS § 802

Tex. Alco. Bev. Code § 11

STATUTE 3

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

§1. SHORT TITLE – THIS ACT MAY BE CITED AS THE XXXX MARIJUANA ACT OF 2013

§2. MISCELLANEOUS

a) NOTWITHSTANDING ANY OTHER CHAPTER, THIS ACT DOES NOT SUPERSEDE, AMEND, OR REVOKE ANY OTHER CHAPTER ADDRESSING THE DISTRIBUTION, POSSESSION, OR CONSUMPTION OF MARIJUANA FOR ITS LEGAL MEDICINAL PURPOSES.

§3. DEFINITIONS

WHEN USED IN THIS ACT –

a) **MARIJUANA** –

THE TERM “MARIJUANA” SHALL MEAN ANY STRAIN, SPECIES, OR GENUS OF THE CANNABIS PLANT, INCLUDING BUT NOT LIMITED TO INDICA, SATIVA, OR RUDERALIS. THE TERM SHALL ALSO MEAN ANY EXTRACT, RESIN, OIL, SEED, SALT, TINCTURE, INFUSION, EDIBLE, CONSUMABLE, OR ANY COMPOUND OBTAINED FROM THE CANNABIS PLANT INCLUDING BUT NOT LIMITED TO HASHISH OR HASH OIL, KIEF, TETRAHYDROCANNIBINOL (THC) INFUSED SPIRITS, AND CANNABINOIDS SUCH AS TETRAHYDROCANNIBINOL (THC), CANNABIDIOL (CBD), CANNABINOL (CBN), TETRAHYDROCANNABIVARIN (THCV) AND CANNABIGEROL (CBG).

THE TERM SHALL NOT MEAN HEMP FIBER, ROPE, THREAD, OR TEXTILE.

b) **DISTRIBUTION** –

THE TERM “DISTRIBUTION” SHALL MEAN THE ACT OF DISTRIBUTING MARIJUANA. THE TERM INCLUDES BUT IS NOT LIMITED TO SELLING, EXCHANGING, CONVEYING, TRANSFERRING, DISPENSING OR ASSIGNING MARIJUANA TO ANOTHER PERSON. DISTRIBUTION SHALL NOT INCLUDE GIVING MARIJUANA AS A “GIFT”, AS THE ACT OF GIFTING IS DEFINED ELSEWHERE IN ANY OTHER CHAPTER, OR AS DEFINED WITHIN THE COMMON LAW OF TEXAS.

c) **POSSESSION** –

THE TERM “POSSESSION” SHALL MEAN THE CUSTODY, MANAGEMENT, OR ACT OF POSSESSING MARIJUANA ON ONE’S PERSON, WITHIN THEIR HOME OR VEHICLE, OR CONTAINED OR CONCEALED IN ANY PERSONAL EFFECT OF A PERSON SUCH AS A BAG OR ANY BELONGING.

d) **CONSUMPTION** –

THE TERM “CONSUMPTION” SHALL MEAN THE ACT OF CONSUMING MARIJUANA. CONSUMPTION INCLUDES BUT IS NOT LIMITED TO SMOKING, EATING, OR OTHERWISE INGESTING MARIJUANA. CONSUMPTION ALSO MEANS

THE ACT OF PREPARING MARIJUANA FOR CONSUMPTION, WHICH INCLUDES COOKING IT INTO BROWNIES, COOKIES, CAKES, CANDIES, MARIJUANA-INFUSED OIL, BUTTER, SPIRIT, OR ANY OTHER FORM CAPABLE OF BEING INGESTED. CONSUMPTION INCLUDES ANY POSSIBLE MEANS OF INGESTING MARIJUANA.

e) PARAPHERNALIA –

THE TERM “PARAPHERNALIA” SHALL MEAN ANY ARTICLE TOOL OR OBJECT THAT HAS BEEN, OR COULD BE USED, TO DISTRIBUTE, POSSESS, OR CONSUME MARIJUANA. PARAPHERNALIA INCLUDES BUT IS NOT LIMITED TO PIPES AND WATER BONGS, VAPORIZERS, ROLLING PAPERS, BAGGIES, SCALES, GRINDERS, PIPE CLEANERS.

THE TERM “DISTRIBUTION PARAPHERNALIA” SHALL TAKE THE MEANING GIVEN TO IT IN SECTION 4 BELOW.

f) PERSON –

THE TERM “PERSON” SHALL REFER ONLY TO A HUMAN BEING, AND SHALL NOT REFER TO CORPORATIONS, BUSINESSES, OR ANY ORGANIZATION OR ENTITY.

g) PERSONAL USE –

THE TERM “PERSONAL USE” SHALL MEAN THE RECREATIONAL CONSUMPTION OF MARIJUANA BY A PERSON.

§4. DISTRIBUTION

a) THE DISTRIBUTION OF MARIJUANA IS LEGAL IF THE DISTRIBUTOR IS IN POSSESSION OF A VALID LICENSE TO DISTRIBUTE MARIJUANA ISSUED BY THE STATE OF TEXAS, AND THE DISTRIBUTOR IS:

- 1) CURRENT ON ALL LICENSING FEES AND TAXES, AND DOES NOT OWE FINES OR PENALTIES; AND**
- 2) THE DISTRIBUTOR’S LICENSE IS NOT, PENDING, ON PROBATION, SUSPENDED, OR OTHERWISE INVALID, OR UNDER INVESTIGATION.**

b) ANY PERSON THAT DISTRIBUTES MARIJUANA WHILE NOT IN POSSESSION OF A VALID LICENSE ISSUED BY THE STATE OF TEXAS, OR WHOM DISTRIBUTES MARIJUANA WHILE OWING A FINE OR PENALTY FOR ANY LICENSE VIOLATION, SHALL BE PRESUMED TO BE ILLEGALLY DISTRIBUTING MARIJUANA AND SUBJECT TO PROSECUTION, FINES AND PRISON TIME AS PRESCRIBED IN THIS SECTION.

- 1) A PERSON MAY NOT DISTRIBUTE MARIJUANA IF NOT IN POSSESSION OF A CURRENT AND VALID LICENSE TO DISTRIBUTE MARIJUANA ISSUED BY THE STATE OF TEXAS EVEN IF HIS APPLICATION IS APPROVED AND THE PERSON IS AWAITING THE PHYSICAL LICENSE, OR IF THE LICENSE HAS LAPSED AND THE DISTRIBUTOR IS AWAITING A NEW APPROVAL.**
- 2) A DISTRIBUTOR MAY DISTRIBUTE MARIJUANA IF THE DISTRIBUTOR IS AWAITING A RENEWAL, AND THE CURRENT LICENSE HAS NOT LAPSED.**

c) THERE SHALL EXIST A REBUTTABLE PRESUMPTION THAT A PERSON IN

POSSESSION OF NO MORE THAN FIVE (5) POUNDS OF MARIJUANA AND DISTRIBUTION PARAPHERNALIA, OR MORE THAN FIVE (5) POUNDS OF MARIJUANA, WHETHER IN POSSESSION OF DISTRIBUTION PARAPHERNALIA OR NOT, IS WITH THE INTENT TO DISTRIBUTE.

1) DISTRIBUTION PARAPHERNALIA INCLUDES BUT IS NOT LIMITED TO SCALES, BAGGIES, AN UNREASONABLE AMOUNT OF CASH, CASH COUNTING MACHINES, CASH WRAPPERS, RUBBER BANDS, OR ANY ITEM, OR ITEMS, THAT AID IN THE PACKAGING, DISTRIBUTION, OR ORGANIZATION OF MARIJUANA, OR ANY ITEM, OR ITEMS, THAT AID IN THE PACKAGING, DISTRIBUTION, OR ORGANIZATION OF THE PROCEEDS OF THE DISTRIBUTION OF MARIJUANA.

d) PUNISHMENT – ILLEGAL DISTRIBUTION, OR INTENT TO ILLEGALLY DISTRIBUTE

A PERSON, HAVING BEEN FOUND GUILTY OF ILLEGAL DISTRIBUTION OR HAVING BEEN FOUND GUILTY OF INTENT TO ILLEGALLY DISTRIBUTE SHALL BE PUNISHABLE UP TO THE FOLLOWING GUIDELINES:

1) UP TO ONE (1) POUND OF MARIJUANA

A) NOT MORE THAN ONE (1) YEAR IN PRISON; AND

B) UP TO \$1,000 FINE

2) OVER ONE (1) POUND, BUT NOT MORE THAN FIVE (5) POUNDS OF MARIJUANA

A) NOT MORE THAN TWO (2) YEARS IN PRISON; AND

B) MINIMUM OF \$1,000, BUT NOT MORE THAN \$10,000 FINE

3) MORE THAN FIVE (5) POUNDS OF MARIJUANA

A) MINIMUM OF TWO (2), BUT NOT MORE THAN TWENTY (20) YEARS IN PRISON

B) MINIMUM OF \$10,000, BUT NOT MORE THAN \$100,000 FINE

4) THE ILLEGAL POSSESSION OR CONCEALMENT OF A FIREARM WHILE ILLEGALLY DISTRIBUTING MARIJUANA SHALL BE AN AGGRAVATING CIRCUMSTANCE, AND SENTENCING SHALL BE UP TO THE DISCRETION OF THE COURT.

e) EXCEPTION –

1) A PERSON MAY NOT BE FOUND GUILTY OF THE INTENT TO ILLEGALLY DISTRIBUTE IF THE PERSON:

A) IS IN POSSESSION OF MARIJUANA AND DISTRIBUTION PARAPHERNALIA; AND

B) THE PERSON'S MARIJUANA DISTRIBUTION LICENSE APPLICATION HAS BEEN APPROVED, BUT HAS NOT BEEN RECEIVED.

§5. POSSESSION BY PRIVATE PERSONS

a) OUTSIDE OF THE RESIDENCE –

IT IS LAWFUL TO CARRY, OR OTHERWISE POSSESS ON ONES PERSON, OUTSIDE OF THAT PERSON'S RESIDENCE UP TO ONE OUNCE OF MARIJUANA FOR PERSONAL USE AND CONSUMPTION. ANYTHING OVER ONE OUNCE ON ONE'S PERSON OUTSIDE OF THEIR RESIDENCE SHALL BE

CRIMINAL POSSESSION AND SUBJECT TO THE PUNISHMENT AS STATED IN THIS SECTION.

b) WITHIN THE CONFINE'S OF THE RESIDENCE –

IT IS LAWFUL TO OWN UP TO ONE POUND OF MARIJUANA, WHICH MAY BE POSSESSED WITHIN THAT PERSON'S RESIDENCE. ANYTHING OVER ONE POUND SHALL BE CRIMINAL POSSESSION AND SUBJECT TO THE PUNISHMENT AS STATED IN THIS SECTION.

1) TRANSPORTATION EXCEPTION FOR UP TO ONE POUND OF MARIJUANA –

THE TRANSPORTATION OF UP TO ONE POUND OF MARIJUANA BETWEEN PLACE OF DISTRIBUTION AND THE OWNER'S RESIDENCE SHALL BE ALLOWED WITHIN A TWO-DAY TIME PERIOD TO BEGIN RUNNING FROM THE TIME OF PURCHASE.

A) MARIJUANA PURCHASES SHALL BE TRACKED BY MEANS OF A BARCODE, OR IDENTIFIER, WHICH CAN BE SCANNED TO DETERMINE TIME OF PURCHASE. LICENSED DISTRIBUTORS SHALL BE REQUIRED TO UTILIZE THIS TECHNOLOGY AND IS A REQUIREMENT FOR LICENSURE WITH THE STATE OF TEXAS, UNLESS OTHERWISE APPROVED BY THE STATE, AS STATED IN THE CHAPTER PERTAINING TO LICENSING.

B) POSSESSION OF OVER ONE OUNCE OF MARIJUANA OUTSIDE A PERSON'S RESIDENCE, AND OUTSIDE THE TWO-DAY PERIOD OF TRANSPORTATION SHALL BE A VIOLATION OF SUBSECTION (A) ABOVE.

C) POSSESSION OF OVER ONE OUNCE OF MARIJUANA WITHOUT A SCANNABLE BARCODE, IDENTIFIER, OR OTHER PROOF OF TIME OF PURCHASE APPROVED BY THE STATE OF TEXAS, SHALL BE A VIOLATION OF SUBSECTION (A) ABOVE.

c) PUNISHMENT – CRIMINAL POSSESSION

1) A PERSON HAVING BEEN FOUND GUILTY OF CRIMINAL POSSESSION OF OVER ONE (1) OUNCE OF MARIJUANA OUTSIDE THE RESIDENCE, SHALL BE PUNISHED WITH NOT MORE THAN ONE HUNDRED AND EIGHTY (180) DAYS IN JAIL, AND NOT MORE THAN \$500 DOLLAR FINE.

2) A PERSON HAVING BEEN FOUND GUILTY OF CRIMINAL POSSESSION OF OVER FIVE POUNDS OF MARIJUANA WITHIN THE CONFINE'S OF THE RESIDENCE, SHALL BE PUNISHED WITH NOT MORE THAN TWO YEARS IN JAIL, AND NOT MORE THAN \$10,000 DOLLAR FINE.

A) A PERSON IN POSSESSION OF MORE THAN FIVE (5) POUNDS OF MARIJUANA SHALL BE ADJUDICATED IN CONSIDERATION OF SECTION 4 ABOVE.

§6. CONSUMPTION –

a) YOU MUST BE 21 YEARS OF AGE OR OLDER TO PURCHASE, POSSESS, AND/OR CONSUME MARIJUANA

1) THE UNDERAGE PURCHASE, POSSESSION, AND/OR CONSUMPTION OF

MARIJUANA, AND THE VIOLATION OF CONTRIBUTING TO MINORS IS PUNISHABLE IN ACCORDANCE WITH THE CURRENT LAWS PERTAINING TO ALCOHOL VIOLATIONS OF THE SAME NATURE

- b) IT SHALL BE ILLEGAL TO OPERATE A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF MARIJUANA, AND ALSO TO CONSUME MARIJUANA WHILE OPERATING A MOTOR VEHICLE
 - 1) PUNISHMENT FOR THESE OFFENSES SHALL BE PUNISHED IN ACCORDANCE WITH THE CURRENT LAWS PERTAINING TO ALCOHOL VIOLATIONS OF THE SAME NATURE
- c) IT SHALL BE LEFT TO THE COUNTIES TO DETERMINE THE LAWS PERTAINING TO THE PUBLIC CONSUMPTION OF MARIJUANA
- d) THE CONSUMPTION OF MARIJUANA BY PRIVATE PERSONS WITHIN THEIR RESIDENCE IS LAWFUL, EXCEPT BY THOSE UNDER THE AGE OF 21 YEARS.
 - 1) PRIVATE ESTABLISHMENTS MAY ALSO AUTHORIZE THE PERSONAL CONSUMPTION OF MARIJUANA ON THEIR PROPERTY.

COMMENTARY: Texas is the second largest state in the USA as far as land area, and is the second largest state as far as population. Texas is home to some 25,000,000 residents. Texas has the largest border with Mexico, over 1200 miles, nearly doubling all other states combined.¹ This border area, a large portion of which is open and incapable of being continuously monitored by border enforcement agencies, is extensively used by drug trafficking organizations, or cartels, to smuggle illicit drugs into the United States. Additionally, more than 55 million vehicles cross the border into Texas annually. This volume makes it impossible to catch even a small percentage of traffickers. This creates opportunity for the cartels. They can virtually bank on getting a large percentage of their shipments across the border.

By far the largest quantity of drugs trafficked across the border is Marijuana. Texas ranks first in the nation for seizures of Marijuana and Cocaine, with Marijuana accounting for more than 32 times the amount of Cocaine. Marijuana use is rampant across Texas.

With the cartels and their goods comes the violence. A main goal of Marijuana legalization should be to weaken the cartel's power, and eventually eradicate their influence in the USA. The government should be at the forefront of this. With the huge border Texas is the gateway from Mexico to the rest of the USA. Once in the state, the shipments hit I-10 and other interstate highways, acting like arteries to the USA. Curbing illegal imports of Marijuana into Texas shall effectively relieve illegal drug activity in other states. The idea here is to encourage the production and cultivation of Marijuana here in the USA.

Marijuana is not only from Mexico, but small boutique growers also exist in Canada and a steady stream of potent Marijuana enters the northern border of the USA as well. Marijuana is also produced here in the USA though on a small scale.

In effect, in this time of rampant economic decline, unemployment, and with all the financial craziness, legalization is a way of boosting the US economy and creating jobs. Marijuana legalization is in essence an additional revenue stream for the states and federal government. Licensing fees, excise taxes, income taxes and sales taxes, etc... Additionally, by

¹ California, Arizona, and New Mexico

legalizing Marijuana law enforcement, the judiciary, and our prison system may save money on unnecessary investigations and prosecutions of well-meaning Marijuana users and distributors, which will release tax money/funds to be diverted to more imminent needs.

This statute does not address the licensing process, but to do this the states should create a licensing board, or use an existing agency such as the entities that regulate alcohol like the TABC in Texas. Producers, wholesalers, and retail distributors must be required to be licensed and regulated by the state. Regulating these parties' should be aimed at ensuring product consistency, quality, and safety. Marijuana is a lucrative business and a lot of money changes hands. Regulation should also serve to ensure the accuracy of financial reporting.

By shifting the volume of Marijuana available from Mexican and Canadian imports, to a regulated domestic product, states can increase GDP, increase revenue, create jobs, and ensure the health and safety of their citizens. And indirectly decrease the violent influence of Mexican cartels.

This section of statute focuses mostly on the ability to distribute, and the rights of private citizens to possess and consume Marijuana.

The first substantive section defines terms that are the core of the statute. Clever people will attempt to find loopholes and it is the duty of legislators to eliminate confusion and loopholes from the law. Much of these loopholes and confusion exist in the definition of important terms.

It is important to define "Marijuana" as it can take many forms capable of being an intoxicant, and may be a source of controversy in future litigation, etc... The statute excepts fibers derived from Hemp as it is not intoxicating and serves a useful purpose and not recreational consumption. It is used to make rope, clothing, and other textiles.

The same goes for the other substantive terms: distribution, possession, and consumption. Clever attorneys can argue that these terms mean whatever helps their clients, and defining them will help judges interpret the statute more accurately.

In this statute, "distribution" means any changing of hands of Marijuana, except the gifting of Marijuana so long as it satisfies the elements of a gift transaction. If a person can give a bottle of liquor as a gift, then why not a bag of Marijuana, having been legalized for possession and consumption? "Possession" is any custody of Marijuana be it on the person, in their home, vehicle, or place of business, or contained in any personal effect such as a bag, etc... "Consumption" means the recreational ingestion of Marijuana as defined in the statute.

"Paraphernalia" and "distribution paraphernalia" are in essence the tools of the trade. It is any item that can be used in the consumption, possession, or distribution of Marijuana.

The statute, acting to regulate the possession of Marijuana, it is foreseeable that one may create several entities, corporations, etc... to allow them to possess more than the legal limit. Therefore, the statute regulates possession of human beings only, and does not legalize possession in the case of any entity, corporation, business, or organization, only human persons. "Personal use" means the recreational consumption of Marijuana.

The next section is Distribution. The section does not deal with the application and licensing process, but the eligibility to distribute to the public. A distributor must apply for a

license. The application is approved or denied. To lawfully distribute Marijuana, the distributor must have in his/her possession a valid license, and not until the license arrives into his possession. Even if the application has been approved, he cannot distribute without the actual license. This is rooted in consumer protection and to ensure that the customer can verify that the distributor is authorized by the state and that the product meets all standards. Additional requirements are that all fees, penalties and taxes have been paid and are current. The license must be valid, and not on probation suspended, or otherwise.

Loopholes may be exploited in distribution also, so the statute creates a rebuttable presumption of the intent to distribute where a person possesses Marijuana and distribution paraphernalia together. Moreover, it is rarely conceivable that a person need to possess more than five pounds of Marijuana, and the statute creates a rebuttable presumption of intent to distribute even without the presence of distribution paraphernalia. These presumptions put the burden of proof on the possessor to prove that he did not have the intent to distribute, and in the case of the latter, why he needs over five pounds of Marijuana at once.

Texas has some of the harshest penalties for illegal distribution, and intent to illegally distribute. The penalties in this statute are not as harsh with Marijuana being legal to possess and consume. Having been legalized, the illegal distribution of Marijuana is in essence robbing the government of revenue, and constitutes tax evasion. Certainly these charges can be added to the indictment. The penalties are mostly aimed at consumer protection and revenue recovery for the government. Possession of a firearm in addition to these crimes serves as an aggravating circumstance and the penalty should reflect this, and is left to the judge's discretion.

Possession is legal, and persons are allowed to carry Marijuana with them. The amount allowed to be carried is capped at 1 ounce. The amount that a person may possess in their home is capped at five pounds. It is not foreseeable why a person would need to carry around more than one ounce. Furthermore, it is not foreseeable why a person would need to own more than five pounds. Marijuana is a commodity and it is foreseeable that the price may fluctuate with the seasons, supply, weather, etc... and to take advantage of price fluctuations consumers may buy up to five pounds at a time, presumably when the price is low. There exists the issue of possession outside the home when it is purchased, however, Therefore the statute creates a two-day period beginning at the time of purchase during which the consumer may possess up to five pounds outside the home, called the transportation exception. Furthermore, to enforce the transportation exception the purchase of Marijuana must be accompanied by a proof of purchase that verifies the time of purchase. This could be in the form of a barcode, RFID chip, or other state approved device. Punishment for illegal possession is not to be severe, but to be a deterrent.

Consumption of Marijuana is legalized and may take place in the privacy of the residence and private establishments where allowed, however the consumption while operating a motor vehicle is not legal, nor is operating a motor vehicle while under the influence of Marijuana. The user must be at least 21 years of age. The public consumption of Marijuana is to be left up to the counties, as is the public consumption of alcohol. The idea behind this section is to treat Marijuana consumption much like alcohol consumption. The age limit, motor vehicle laws, and places where consumption is allowed is near identical. Persons can consume Marijuana in their homes, or private establishments, much like bars. The punishment for violations is also the same as alcohol violations. The problem of measuring the level of intoxication exists, and requires scientific analysis of the effects of Marijuana on the body and how long the effect lasts. It is

unlike alcohol in this sense, as it cannot be measured by Breathalyzer, and stays in the blood stream for around 30 days.