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Questions remain, but Alaska progresses with rulemaking

Lack of Marijuana Control Board input has industry baffled

By Jana Weltzin

As of early August, the regulatory framework for Alaska's recreational commercial marijuana market remains in flux.

The Marijuana Control Board (MCB) was finally seated July 2. Prior to the MCB members officially being seated, the Alcohol Beverage Control Board (ABC) and director Cynthia Franklin were tasked with the chore of starting the regulatory drafting process to ensure the regulatory timeframes and deadlines were met according to the voter initiative. The timeline released by Franklin laid out the manner in which the regulations and rules would be presented to the public. The nitty gritty of the release and comments from Franklin at both the July 2 MCB meeting and the Aug. 3 work session indicated that the regulations would be drafted by a contract regulatory attorney, whose experience in regulatory drafting is great but her experience in cannabis leaves something to be desired.

Further, the proposed regulations are to be issued to the public in three packets. As of early July, the state's contract regulation drafter had produced two of the three packets of regulations, the second of which was released to the public on July 2. Needless to say, the cannabis industry community was (and still is) concerned that the bulk of regulations being drafted and submitted to the public came with no input from the MCB members appointed by Gov. Bill Walker.

Prior to the MCB being seated, the board members of the ABC Board would see the packet of regulations for the very first time on the day of the public meeting. Those regulations would then be published on the state's website for public review.

It was clear to the public and the newly seated MCB members that receiving and reviewing the proposed regulatory packet on the exact same day the board is supposed to provide meaningful input simply did not make sense. The board had zero input on the regulatory drafting process, even though the MCB includes two industry leaders and three strong community members whose experience ranges from assemblyman to law enforcement. Certainly, these five members of the MCB were appointed for a reason and should have meaningful input on the drafting of the cannabis industry's regulatory framework. Bruce Schulte, chairman of the MCB, took a stand and demanded a work session for the board to comb through regulatory packet three days before the next meeting.

As for the current state of the regulatory scheme, here's a brief overview of where each packet stands as of early August.

Regulatory Packet No. 1: Packet No. 1 addresses the procedures and methods for a local government to opt out of allowing commercial marijuana establishments in its municipality. The packet was heard by the MCB on Aug. 10-11. As of Aug. 10, the MCB had a public meeting and made minimal revisions to the packet.

Regulatory Packet No. 2: Packet No. 2 addresses requirements for ownership, residency requirements, security for grows and cultivation centers, marketing prohibitions and many other vital regulatory concepts. This packet was heard and seen for the first time by the MCB on July 2 and went out for public comment on July 7. So far this packet has more than 250 pages of public comments and went back for consideration by the MCB on Aug. 11. I'm just guessing here, but I would imagine substantial revisions will be made.

Regulatory Packet No. 3: The MCB called a work session, open to the public but closed to public testimony, on Aug. 3. After a 45-minute introduction by the contract regulatory writer, the MCB started looking at some of the third regulatory packet, but, due to time constraints, failed to get through half of the packet.

At this point, the regulations are looking much less restrictive, in regards to expensive barriers to entry than many other states. However, there are a few main unknowns that will seriously affect the marketplace's vitality.

Among the top factors that will have a serious impact on the Alaskan cannabis market are whether out-of-state ownership and investment will be allowed, what is considered an indirect and direct financial interest, and how many licenses will be awarded.

The regulations, as written, prohibit out-of-state ownership. The majority of public commentary has opposed the total ban on out-of-state ownership, as capital is needed to build custom grows and facilities to suit the temperature and conditions of the Great North. Additionally, the regulations prohibit any financial interest in the business by anyone who is not a licensee. However, no one has articulated what this means yet. Almost all the public commentary spoke against this prohibition. Lastly, the regulations have no indication as to the number of licenses that will be awarded. The logic on this is to allow the local governments to decide how many marijuana establishments will be allowed. Depending on how local governments handle this issue, the success of the industry will likely be determined on a location-by-location basis.

> **"THE REGULATIONS, AS WRITTEN, PROHIBIT OUT-OF-STATE OWNERSHIP"**

In sum, the state of Alaska's marketplace looks promising, but without proper capitalization and safeguards against over-cultivation, leaves much to be desired and much to be determined.

Jana Weltzin is a member of Rose Law Group's medical marijuana and zoning/land use departments. She advises clients in the cannabis industry in Arizona and Alaska. Rose Law Group assists its clients with business structure, compliance with state and local laws, zoning approval and use permits, site selection, and product regulations.