STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
RAÚL R. LABRADOR

September 29, 2025

VIA HAND DELIVERY
The Honorable Phil McGrane
Idaho Secretary of State
Statehouse

Re: Certificate of Review
Proposed Initiative Creating New Medical Marijuana Act by Adding Chapter 35 to Title 37, Idaho Code, to Legalize the Use of Medical Marijuana

Dear Secretary of State McGrane:

An initiative petition was filed with your office on August 29, 2025. Pursuant to Idaho Code section 34-1809, this office has reviewed the petition and has prepared the following advisory comments. Given the strict statutory timeframe within which this office must review the petition, our review can only isolate areas of concern and cannot provide in-depth analysis of each issue that may present problems. Further, under the review statute, the Attorney General's recommendations are "advisory only." Idaho Code § 34-1809(1)(b). The petitioners are free to "accept or reject them in whole or in part." *Id.* Due to the available resources and limited time for performing the reviews, we did not communicate directly with the petitioner as part of the review process. The opinions expressed in this review are only those that may affect the legality of the initiative. This office offers no opinion about the policy issues raised by the proposed initiative.

BALLOT TITLES

Following the filing of the proposed initiative, this office will prepare short and long ballot titles. Idaho Code § 34-1809(2)(a). The ballot titles should impartially and succinctly state the purpose of the measure without being argumentative and without creating prejudice for or against the measure. Idaho Code § 34-1809(2)(e). While our

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office prepares titles for the initiative, petitioners may submit proposed titles for consideration. Idaho Code § 34-1809(2). The advisory comments below address the proposed titles included in the initiative petition. This does not mean, however, that our office agrees with the substance of the proposed titles or that this office will ultimately use the proposed titles if the proposed initiative is filed.

MATTERS OF SUBSTANTIVE IMPORT

A. Summary of the Initiative

The initiative is titled the "Idaho Medical Cannabis Act" ("Act") and is denominated as Idaho Code sections 37-3501 *et seq*.[1] Primarily, the initiative seeks to amend title 37, Idaho Code, by adding newly proposed chapter 35 to title 37 (Prop. I.C. § 37-3501 *et seq*.), which declares that persons authorized by the Act to grow, possess, distribute, transport, process, sell, and use medical cannabis, and conduct related activities, are protected from criminal, civil, and administrative penalties and sanctions.

In general, the Act would allow the Idaho Board of Pharmacy ("board") in cooperation with the Idaho Department of Health and Welfare ("department") to issue "medical cannabis production licenses" to various persons and entities to produce, transport, and distribute (etc.) medical marijuana to "medical cannabis cardholders" who have been diagnosed by a "practitioner" with having a "substantial health condition." The Act precludes criminal and civil liability and sanctions for persons acting within its authorization.

B. Legal and Practical Concerns

Given the length and complexity of the Act, this review will necessarily address only a select number of its more significant and noteworthy provisions. This review will involve, among other matters, the "single-subject rule" of the Idaho Constitution. It states: "Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title." IDAHO CONST. art. III, § 16. The constitutional provision continues, "but if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be embraced in the title." *Id.* In short, a title must accurately summarize what is contained in the body of the initiative, and the body of the initiative must reflect what is in the title.

[1] References to "proposed" I.C. § 37-3501 *et seq*. and other proposed statutory changes will be prefaced with "Prop." References to "Act" and "initiative" are used interchangeably.

SECTION 1:

1. Heading

The heading for "Section 1" of the initiative states that it is amending title 37 of the Idaho Code by the addition of a new chapter, chapter 35, title 37. However, Prop. I.C. §§ 37-3501 *et seq*. should logically fall within chapter 27 of title 37, which would place it in line with other statutes relating to penalties and prohibited acts involving controlled substances. It is therefore recommended that the initiative designate its proposed new Act as Prop. I.C. § 37-2732E[2] *et. seq*.

2. Requested Short Title – Prop. I.C. § 37-3501

The requested Short Title"[3] reads in full as "Idaho Medical *Cannabis* Act." Prop. I.C. § 37-3501(1) (emphasis added). The term "cannabis" is used extensively throughout the Act. However, cannabis is defined in the Act as "marijuana as defined in section 37-2701, Idaho Code." Prop. I.C. § 37-3502(2). Therefore, it requires reference to two definitions for the reader to understand that the Act seeks to legalize the medical use of marijuana—not cannabis. Cannabis is not the same as Idaho's statutorily defined "marijuana," which excludes various parts of the "plant genus Cannabis." *See* Idaho Code § 37-2701(u)(1)&(2). To avoid misleading the public about the subject matter of the initiative, it is recommended that "cannabis" be replaced with "marijuana" throughout the Act.

The initiative does not request a general (or "long") title. As required by Idaho Code § 34-1809(2), within ten working days after receiving copies of the petition, the Attorney General shall prepare ballot titles containing a short title (not exceeding 20 words) and a general title (not exceeding 200 words).

3. Intent of the Act - Prop. I.C. § 37-3501

Subsection (2) of Prop. I.C. § 37-3501 states that the intent of the Act is "to authorize the use of medical cannabis for persons diagnosed with a substantial health condition," and that persons acting in accordance with the Act will not "be held to violate chapter 27, title 37, Idaho Code, or any other provision of state law, local ordinance, or administrative rule."

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[2] Idaho Code § 37-2732D (trafficking in fentanyl) was added to the Uniform Controlled Substances Act, effective July 1, 2024. Therefore, the next addition to Idaho Code § 37-2732 should be Idaho Code § 37-2732E.

[3] Quotations of wholly capitalized parts of the initiative will be modified to capitalize only the first letter of each word.

4. Definitions - Prop. I.C. § 37-3502

Several of the definitions within Prop. I.C. § 37-3502 deserve consideration or comment. Subsection (4) defines "medical cannabis" as "a) inhalable cannabis; b) smokeable cannabis; and c) ingestible cannabis processed to a tablet, chewable, droplet, or pill containing up to ten (10) milligrams of [THC] per tablet, chewable, droplet, or pill."

Subsection (4) describes several forms of cannabis that would constitute "*medical* cannabis," which, read in isolation, implies that they would be legal regardless of authorization under the Act. (*See* section 2, above, regarding use of word "cannabis.")

Subsections (3) and (5) together provide that a "medical cannabis cardholder" or "cardholder" is "an individual with a diagnosed substantial health condition that has been approved by the department[4] for a medical cannabis card."

A "medical cannabis production license" or "license" is "a license issued by the board to grow, handle, process, manufacture, test, transport, distribute and sell medical cannabis" according to the Act. Prop. I.C. § 37-3506(1).

The Act defines a "Practitioner" as "a person that may diagnose a *substantial health condition* under chapter 18, title 54, Idaho Code," qualifying the diagnosed person to be a medical cannabis cardholder. Prop. I.C. § 37-3506(8) (emphasis added). Physicians and physician assistants clearly meet the "practitioner" criteria. *See* Idaho Code §§ 54-1803, 1807A. In addition, Idaho Code § 54-1804(1) provides a list of persons who, "though not holding a license to practice medicine in this state, may engage in activities included in the practice of medicine."[5] One of those listed is a person who "administers[] a family remedy to a member of the family." Idaho Code § 54-1804(1)(k). If the Act becomes law, attempts will likely be made to have cannabis be deemed a "family remedy" to allow a family member to "diagnose" other family members with a substantial health condition and obtain a medical cannabis card.

Subsection (9) defines "substantial health condition" as "a condition described in" Prop. I.C. § 37-3504. That proposed statute lists 20 conditions that qualify as substantial health conditions that would allow a person to obtain a medical cannabis card. The provision lists serious and verifiable diseases such as AIDS, Alzheimer's,

[4] "Department" is defined in the Act as the Department of Health and Welfare. Prop. I.C. § 37-3502(3).

[5] Idaho Code § 54-1803(1) states that the "practice of medicine" includes the "diagnosis" of, or prescription for any human disease, ailment, injury, infirmity, deformity or other condition, physical or mental, by any means or instrumentality that involves the application of principles or techniques of medical science," etc.

ALS, and cancer, but also less verifiable conditions such as anxiety, insomnia, acute pain (longer than two weeks), and chronic and persistent pain (lasting longer than two weeks and not adequately managed). Prop. I.C. § 37-3504. The inability to verify that a person has a "substantial health condition" could lead to fraud or abuse by persons attempting to obtain a medical cannabis card.

Subsection (10) states that "'[t]etrahydrocannabinol' or 'THC' means a substance derived from cannabis and contained in a plant of the genus cannabis"; "synthetic equivalents" of cannabis substances; or "synthetic substances, derivatives, and their isomers with similar chemical structure as described in section 37-2707(i)." However, there is no sub-section (i) to Idaho Code § 37-2707, which lists Schedule II controlled substances. It appears likely that the Act should more accurately refer to Idaho Code § 37-2705(d)(27), which defines "Tetrahydrocannabinols or synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, [etc.]." It is recommended that Act be modified accordingly.[6]

5. Authorization - Prop. I.C. § 37-3503

The thrust of the Act is expressed in Prop. I.C. § 37-3503 as follows:

> Notwithstanding any provision of law to the contrary, the growth, possession, distribution, transportation, processing, sale and use of medical cannabis, *as well as activities related to* the growth, possession, distribution, transportation, processing, sale and use of medical cannabis, are authorized as provided in this chapter.

(Emphasis added.)

Whether an activity is "related to the growth, possession, distribution, transportation, processing, sale and use of medical cannabis," and thus, authorized by the Act, would be subject to uncertainty and likely lead to a constitutional challenge based on the "void for vagueness" principle. That principle is that "a statute which either forbids or requires the doing of an act in terms so vague that people of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." *Walsh v. Swapp L., PLLC*, 166 Idaho 629, 641, 462 P.3d 607, 619 (2020) (*quoting Haw v. Idaho State Bd. of Med.*, 140 Idaho 152, 157, 90 P.3d 902, 907 (2004). It is recommended that the initiative clarify what "related activities" fall within the Act's authorization.

[6] As will be discussed, Sections 2 and 3 of the initiative seek to remove marijuana and THC from schedule I and re-classify them as schedule II substances within Idaho's Controlled Substances Act. It will be recommended that Sections 2 and 3 of the initiative be deleted.

6. Substantial Health Conditions - Prop. I.C. § 37-3504

The most noteworthy "substantial health conditions" have been discussed in the above section 4 under Prop. I.C. § 37-3502(9) and need no further comment.

7. Medical Cannabis Card - Prop. I.C. § 37-3505

Subsection (1) of Prop. I.C. § 37-3505 states that, effective July 1, 2026, persons diagnosed with a substantial health condition can apply to the department "for a medical cannabis card for the purchase of medical cannabis." There is no age limitation for becoming a medical cannabis cardholder. *See generally* Prop. I.C. § 37-3505.

Among other requirements, the applicant must provide personal identifying information and a medical health record "stating that the applicant has a diagnosis of a substantial health condition." Prop. I.C. § 37-3505(3). Medical cannabis cards are renewed annually and must be carried by the cardholder when engaging in activities authorized by the Act. Prop. I.C. § 37-3505(5)–(6).

The department, with the cooperation of the board, must provide medical cannabis card recipients with a list of risks, warnings, and safety information. Prop. I.C. § 37-3505(7). The department may "establish procedures by rule to implement the application and issuance provision of this section." Prop. I.C. § 37-3505(8).

Subsection (9) of Prop. I.C. § 37-3505 states that a medical cannabis card applicant "may designate one or more licensed caregivers to assist with obtaining and handling medical cannabis for a cardholder." Later in the Act, it states that "[a] licensed caregiver designated by the medical cannabis cardholder with the department may deliver medical cannabis to the medical cannabis cardholder." Prop. I.C. § 37-3516(3). The Act does not provide any restrictions on who may be a caregiver or how much medical cannabis a caregiver can possess—it merely states that the caregiver "may deliver" cannabis to the cardholder. Also, there is no restriction on how many caregivers a cardholder can designate.

The "caregiver" arrangement is fraught with the possibility that medical cannabis legally limited to being transferred to and ingested by a cardholder will be ingested or seized by one or more caregivers or be distributed to persons outside of the Act's authorization. The Act should be modified to include provisions ensuring that medical cannabis is transported to the intended cardholder without tampering by the caregiver.

8. Medical Cannabis Production License - Prop. I.C. § 37-3506

The Act establishes requirements for obtaining a medical cannabis production license in Prop. I.C. § 37-3506(2). A licensee is authorized to "grow, handle, process, manufacture, test, transport, distribute, deliver and sell to medical cannabis cardholders according to [the Act]." Prop. I.C. § 37-3506(1). An applicant must submit to the board: (a) the location of the production facility (or facilities); (b) a "consecutive hemp license in the person's name and in good standing since 2022" or the creation of "a new legal entity as the licensee"; (c) an operating plan; (d) letters of recommendation from the local community; (e) an initial license fee; (f) identifying information of persons with a voting or financial interest of five per-cent or more; and (g) the "name of a pharmacist that shall provide oversight as to the dispensing, storing, distributing and selling of medical cannabis."

As noted, subsection (2)(b) requires that an applicant initially have consecutive hemp licenses in the person's name and be in good standing since 2022. That requirement would limit licensees to those who have been previously granted "consecutive" industrial hemp licenses.[7] The exclusion of other applicants would likely invite constitutional challenges, such as the taking of property rights without due process and by denying equal protection. *See City of Lewiston v. Knieriem*, 107 Idaho 80, 85, 685 P.2d 821, 826 (1984); *Osborn Utilities Corporation of Osborn v. Public Utilities Commission of Idaho*, 52 Idaho 571, 17 P.2d 333, 334 (1932) ("Any regulation, therefore, which operates as a confiscation of private property or constitutes an arbitrary or unreasonable infringement of personal or property rights is void because repugnant to the constitutional guaranties of due process and equal protection of the laws.").

Subsection (3) provides that a medical cannabis growth and production facility can only be in an "agricultural zone, but not within half (1/2) a mile of an area that the relevant municipality or county has zoned as primarily residential" at the time the Act takes effect. Under subsection (4), processing fulfillment centers and warehousing and distribution centers can be established outside the growth and production facility. Each production license holder may distribute and sell medical cannabis to cardholders "only through retail locations, the internet with in[-]person delivery, or pick up at retail locations or fulfillment centers, and in person delivery." *Id.*

[7] Idaho Code § 37-2701(u)(1) excludes from the definition of marijuana "Industrial hemp or hemp possessed, grown, transported, farmed, produced, processed, or possessed by any other entity engaged in hauling, transporting, delivering, or otherwise moving hemp in interstate or intrastate commerce pursuant to a license granted under the provisions of the 2014 farm bill, the 2018 farm bill, 7 CFR 990.1 et seq., or the approved state plan for the state of Idaho."

According to subsection (5) of Prop. I.C. § 37-3506, medical cannabis production license holders "must engage" a board-licensed pharmacist to "provide oversight for dispensing, storing, distributing and selling of medical cannabis." The pharmacist and license holder must ensure (a) records of the cardholder's medical cannabis card and cardholder's identification are maintained, and (b) that the pharmacist provides oversight to employees and contractors "that sell, store, maintain, and transport medical cannabis under the same rules, policies, and conditions as pharmaceutical opioids." *Id.* Additionally, the license holder and pharmacist must provide warning labels about the effects of cannabis, stating "Keep Out of Reach of Children", and about the risks of overconsumption. Prop. I.C. § 37-3506(5)(c).

Subsection (6) of Prop. I.C. § 37-3506 requires the board to inform the Idaho State Police and local sheriff about the names of persons approved for medical cannabis production licenses. In subsection (7), the Act requires production licensees to be at least 21 years of age. It also precludes production licenses to persons convicted of a felony, or convicted, within five years of applying for a license, of a "misdemeanor for drug distribution." This last requirement does not make sense because, in Idaho, there is no misdemeanor for drug distribution -- it is always a felony. That provision should be deleted. Finally, subsection (8) requires the board to assist applicants for a medical cannabis production license "to the extent possible," and to "approve, deny or approve with conditions" within 30 days of receipt of the application.

9. Criminal Background Checks - Prop. I.C. § 37-3507

Prop. I.C. § 37-3507(1) requires applicants for a medical cannabis production license to consent to being fingerprinted for criminal background checks by the Idaho State Police and F.B.I. The Idaho State Police are required to check the fingerprint records against state, regional, and national criminal record databases, and report the results to the board. Prop. I.C. § 37-3507(1).

10. Operating Plan - Prop. I.C. § 37-3508

Prop. I.C. § 37-3508 lists the information required to be the operating plan, or renewal plan, for a medical cannabis production license. It includes descriptions of the facilities, credentials of the officers, director, and license owner, training, inventory control, security, cultivation and extraction practices, equipment, sanitation, safety procedures, testing capability, equipment, methods, standards, and testing procedures. Prop. I.C. § 37-3508.

11. Number of Licenses & License Holder Operations - Prop. I.C. § 37-3509

Prop. I.C. § 37-3509(1) limits the initial number of medical cannabis production licenses to three. The board can expand the number of licenses issued based on

population growth, but no more than a total of six licenses may be issued. The proposed statute sets out criteria for the board to evaluate applications for licenses if there are more qualified applicants than available licenses. Prop. I.C. § 37-3509(2)-(3).

Subsections (4) and (5) require license holders to operate according to the operating plans and notify the board of material changes in them. The board is required to establish rules for reviewing and complying with operating plans and is authorized to suspend or revoke a license if the license holder fails to cure a noncompliance. *Id.*, subsection (7)(a)-(d).

12. Inspections - Prop. I.C. § 37-3510

Prop. I.C. § 37-3510 allows the board, after giving reasonable notice, to inspect the records and facilities of a medical cannabis production license holder during business hours to determine compliance with the Act. The proposed statute allows inspection of the site, their books, records, and other materials; the questioning of relevant persons; and the removal of cannabis specimens and products for testing. Prop. I.C. § 37-3510(2). Failure to provide reasonable access to records and facilities during business hours may lead to suspension of operations. Prop. I.C. § 37-3510(4).

13. Shipment of Medical Cannabis - Prop. I.C. § 37-3511

Prop. I.C. § 37-3511 states that "Any cannabis that a medical cannabis production license holder cultivates or otherwise produces and subsequently ships" must (1) be labeled with a unique batch number associated with the holder's "inventory control system," (2) be packaged in a tamper resistant container that is "not appealing to children" and (3) includes warnings consistent with Prop. I.C. § 37-3506(5)(c).

14. Civil Enforcement - Prop. I.C. § 37-3512

For "material violations" of the Act by a medical cannabis production licensee, Prop. I.C. § 37-3512 empowers the board to revoke, decline, or conditionally approve the license, and to impose an administrative fine up to $5,000. The provision allows the board to refer "potential criminal activity to law enforcement." Prop. I.C. § 37-3512(3).

15. Qualified Patient Enterprise Fund - Prop. I.C. § 37-3513

Prop. I.C. § 37-3513 would create a "qualified patient enterprise fund" to finance the board's responsibilities under the Act "and to fund peer-reviewed studies

regarding the medical uses of cannabis." The fund would consist of fees and administrative fines, legislative appropriations, and earned interest from the fund.

16. No Insurance Requirement - Prop. I.C. § 37-3514

This provision states that nothing in the Act "requires an insurer, or an employer to pay for or reimburse for medical cannabis."

17. Effect on Use of Other Approved Drugs or Substances - Prop. I.C. § 37-3515

Prop. I.C. § 37-3516 provides that the Act does not "restrict[] or otherwise affect[] the prescription, distribution, or dispensing of a product that the United States food and drug administration has approved." It is unclear how the Act's provisions could restrict or affect a product approved by the U.S. F.D.A. This provision appears unnecessary because the Act does not provide any apparent restrictions or effects on U.S. F.D.A. approved products.

18. Criminal Enforcement - Prop. I.C. § 37-3516

Prop. I.C. § 37-3516 makes it a misdemeanor for persons to: (1) "[s]ell or otherwise give medical cannabis to another person" without authorization by the Act, (2) operate a variety of vehicles, aircraft, and heavy equipment (etc.) "while under the influence of medical cannabis," and (3) smoke, vape or inhale medical cannabis "in any public or commercial areas in the state of Idaho."

It is already illegal to operate a motor vehicle while "under the influence of alcohol, drugs or *any other intoxicating substances*, or any combination of alcohol, drugs and/or any other intoxicating substances[.]" Idaho Code § 18-8004(1)(a) (emphasis added). Subsection (2), while not strictly necessary, harmlessly reinforces the fact that it is illegal to operate a motor vehicle while under the influence any intoxicating substance—including medical cannabis.

Subsection (3) makes it a misdemeanor to ingest (in various ways) medical cannabis "in any public or *commercial areas* in the state of Idaho." (emphasis added). That subsection would likely be challenged on constitutional "void for vagueness" grounds because the meaning of "commercial areas" is not defined and subject to differing opinions. *See Walsh*, 166 Idaho at 641, 462 P.3d at 619 (*quoting Haw*, 140 Idaho at 157, 90 P.3d at 907). It is recommended that the "commercial areas" be defined or this language be eliminated.

19. Prohibitions - Prop. I.C. § 37-3517

Prop. I.C. § 37-3517(1)(a) precludes peace officers, other than correctional officers, from expending "any state or local resources (including time) to make an arrest, seize cannabis, or "conduct any investigation on the sole basis of activity that the peace officer believes to constitute a violation of federal law if the peace officer has reason to believe that the activity is in compliance with this chapter." Subsection (1)(b) prohibits peace officers from enforcing laws that restrict a person's firearm rights if the enforcement is based on "the individual's possession or use of medical cannabis in accordance" with the Act. Peace officers may not "[p]rovide any information or logistical support related to an activity described in paragraph (a) … to any federal law enforcement authority or prosecuting entity. Prop. I.C. § 37-3517(1)(c). State agencies and political subdivisions "may not take adverse action against a person for providing professional services [under the Act] … on the sole basis that the service is a violation of federal law." Prop. I.C. § 37-3517(2).

Prop. I.C. § 37-3517 presents several issues. First, the determination of whether an officer "has reason to believe" that a suspect's conduct falls within the Act would be highly subjective and difficult to ascertain. Next, because the Act does not provide any quantity limits on medical cannabis, federal agencies investigating criminal enterprises involving large amounts of marijuana would be unable to obtain assistance from state, county, or municipal law enforcement officers—assuming the federal suspect is licensed or otherwise authorized to possess or use medical cannabis under the Act. Non-assistance by Idaho's law enforcement agencies with federal agencies could lead to the reduction or elimination of federal assistance (financial or investigatory) to Idaho in law enforcement matters.

Additionally, the "non-cooperation" provisions of the proposed statute would likely disrupt any existing cooperative arrangements between state and federal agencies "concerning traffic in controlled substances and in suppressing the abuse of controlled substances" as required by Idaho Code § 37-2743 ("Cooperative arrangements"). Finally, although the non-assistance by state agencies with their federal counterparts would not present a legal issue, *if* such non-cooperation escalated into actual interference, there could be civil or criminal repercussions for the state and local law enforcement agencies and officers involved.

20. Protections - Prop. I.C. § 37-3518

Practitioners and pharmacists who take any action "authorized by" the Act are protected from "arrest, prosecution, or penalty in any manner," and from being denied "any right or privilege, including without limitation a civil penalty or disciplinary action by a licensing board or bureau." Prop. I.C. § 37-3518(1). Subsection (2) precludes landlords, school districts, public charter schools, state institutions of

higher education, and community colleges from (a) refusing to enroll, lease to, or penalize a person acting within the Act's authority (unless doing so would violate federal law or regulation); and (b) penalizing or denying any benefit under state law or local ordinance for leasing to, or employing a cardholder.

Subsection (3) prohibits employers from discriminating against persons whose conduct falls within the Act in "hiring, termination, or any term or condition of employment," with specific exceptions that do not warrant discussion here. The subsection also states that "[n]o employer is required to allow the use of cannabis in any workplace or to allow any employee to work while under the influence of cannabis." Prop. I.C. § 37-3518(3).

Subsection (4) protects the custody and visitation rights of parents from being denied "solely for conduct allowed under this chapter," nor may findings or presumptions of abuse or neglect be based on conduct authorized under the Act.

Subsection (5) grants users of cannabis under the Act the same rights that would be afforded under state law and local ordinance as "if the person were solely prescribed a pharmaceutical medication as it pertains to: any interaction with a person's employer; drug testing by a person's employer; or testing" required by state or local law, state agency, or local governmental official.

Subsection (6) states that, for the purposes of "medical care" (including an organ transplant), a patient's use of medical cannabis under the Act is considered "the equivalent of the authorized use of any other medication," and "[d]oes not constitute the use of an illicit substance to disqualify an individual from needed medical care." This subsection could be read to suggest that, because the use of medical cannabis is equivalent to the use of any other medication, it would be illegal for hospitals and other health facilities to preclude or limit such use while on their premises. This would likely be a step too far for such facilities, creating many practical problems. For instance, a hospital patient in a neighboring bed, as well as physicians, nurses, and other personnel, might take offense to the use and smell of cannabis in *their* workplace. Also, as noted above, Prop. I.C. § 37-3518(3) states in part, "[n]o employer is required to allow the use of cannabis in any workplace[.]" The initiative should be amended to make it clear that the Act does not allow for the ingestion of medical cannabis on-site.

Subsection (7) requires, to the extent possible, that the authorized use of medical cannabis be treated "the same way the state and political subdivision treat a person's use of prescribed opioids and opiates."

21. Controlling Authority - Prop. I.C. § 37-3520

This proposed statute is misnumbered; it should be Prop. I.C. § 37-35*19*, not 3520. It is self-explanatory, stating: "[n]otwithstanding any other provision of law, no municipality, county or other local entity may require a license for or pass an ordinance that specifically impacts medical cannabis cardholders or a medical cannabis production license that is inconsistent with this chapter."

SECTIONS 2 & 3:

Sections 2 and 3 of the initiative likely violate the single-subject rule set out in article II, § 16 of the Idaho Constitution. That provision states that Idaho requires that all acts "embrace but one subject and matters properly connected therewith." *Labrador v. Idahoans for Open Primaries*, 174 Idaho 1034, 554 P.3d 85, 96 (Idaho 2024), as amended (Aug. 14, 2024).

Marijuana and THC are currently schedule I controlled substances as "hallucinogenic substances" under Idaho Code § 37-2705(d)(19) (marihuana) and Idaho Code § 37-2705(d)(29) (tetrahydrocannabinols). Idaho Code § 37-2704 provides the following test for schedule I:

> The board shall place a substance in schedule I if it finds that the substance:
>
> (a) Has high potential for abuse; and
> (b) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

Section 2 of the initiative would remove all marijuana and all THC from schedule I of Idaho's Controlled Substance Act. (Prop. I.C. § 37-2705, *et seq*.)

Section 3 of the initiative would then add all marijuana and all THC to the list of less dangerous schedule II controlled substances set out in Idaho Code § 37-2707. (Prop. § 37-2707(h)-(i).) To be a schedule II controlled substance, the board must find:

> (a) The substance has high potential for abuse;
> (b) The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
> (c) The abuse of the substance may lead to severe psychic or physical dependence.

By attempting to remove *all* marijuana and *all* THC—not just medical cannabis—from schedule I and re-classify them as schedule II controlled substances, it appears that Sections 2 and 3 violate the single-subject rule.

The short title recommended by the initiative ("Idaho Medical Cannabis Act") gives no hint that *all* marijuana and *all* THC—not just medical cannabis—will be downgraded from schedule I to schedule II. Moreover, nothing in the body of the initiative prior to Sections 2 and 3 indicates that anything more than "medical cannabis" is the subject of the initiative. *See* IDAHO CONST. art. III, § 16 ("if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be embraced in the title."); *See also Idahoans for Open Primaries*, 174 Idaho at ___, 554 P.3d at 96 ("The purpose of this provision … is to "prevent the combining of incongruous matters and objects totally distinct and having no connection nor relation with each other; to guard against 'logrolling' legislation; and to prevent the perpetration of fraud upon the members of the [l]egislature or the citizens of the state in the enactment of laws.").

Because Sections 2 and 3 appear to violate the single-subject rule of article II, § 16 of the Idaho Constitution, it is recommended that they be deleted from the initiative.

SECTION 4:

Section 4 would amend Idaho Code § 37-2732 by excluding conduct authorized by the Act from being penalized for the manufacture, delivery, or possession with the intent to manufacture or deliver a controlled substance—here, marijuana.

SECTION 5:

Section 5 of the initiative would exclude conduct authorized by the Act from Idaho's trafficking in marijuana laws. Consistent with the Act's lack of any limitation on the *quantity* of medical cannabis that cardholders and caregivers must comply with, Section 5 would amend Idaho's marijuana trafficking laws to legalize all conduct authorized under the Act—regardless of the amount of marijuana involved. The following laws and mandatory minimum sentences would not apply to conduct falling within the Act's provisions:

> Trafficking in marijuana -- Idaho Code § 37-2732B(a)(1), by knowingly being in actual or constructive possession of marijuana in the following quantities:
>
> (A) One pound or more, but less than five pounds, or 25 to 49 plants; one year mandatory minimum fixed sentence;

(B) Five pounds or more but less than 25 pounds, or 50 to 99 plants; three-year mandatory minimum fixed sentence;
(C) 25 pounds or more, or 100 or more plants; five- year mandatory minimum fixed sentence.

Without any quantity restrictions on medical cannabis production licensees, medical cannabis cardholders, and caregivers, the ability to keep medical cannabis outside the general public would be greatly compromised. It is recommended that the Act add limitations on the quantity of medical cannabis that can be possessed by those persons.

SECTION 6:

Section 6 contains a Severability clause, which reads:

> SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

The Severability clause appears to be appropriately worded and legally proper.

C. If Enacted, the Initiative Would Have No Legal Impact on Federal Criminal, Employment, or Housing Laws Regarding Marijuana

Idaho is free to enforce its own laws, just as the federal government is free to do the same. *See United States v. Wheeler*, 435 U.S. 313, 317 (1978) (superseded by statute); *State v. Marek*, 112 Idaho 860, 865, 736 P.2d 1314, 1319 (1987). Under the concept of "separate sovereigns," the State of Idaho can create its own criminal laws and exceptions pertaining to the use of marijuana. However, the State of Idaho cannot limit the federal government, as a separate sovereign, from prosecuting marijuana-related conduct under its own laws. *See United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 493–95 (2001). Therefore, passage of the initiative would not affect the ability of the federal government to prosecute marijuana related crimes under federal laws.

The fact that marijuana use remains illegal under federal law may continue to impact Idaho's citizens in additional ways as well. For example, a person's marijuana use might affect the extent to which federal or state housing or employment laws protect that individual. *See Assenberg v. Anacortes Housing Authority*, 268 Fed. Appx. 643, 644 (9th Cir. 2008) (housing); *Emerald Steel Fabricators, Inc. v. Bureau of Labor & Industries*, 230 P.3d 518,520 (Or. 2010) (employment). Thus, the provisions of the

initiative, Prop. I.C. § 37-3501 *et seq*. cannot interfere with or affect federal laws, criminal or civil, which rely, in whole or in part, on marijuana being illegal under the federal Controlled Substances Act.

D. Other Recommended Revisions or Alterations

Apart from requiring labels on shipments of medical cannabis to read "Keep Out of Reach of Children," and that shipments shall not be "appealing to children" (*see* Prop. § 37-3511), the initiative does not address whether children or adults under 21 years of age may be in proximity to, or contact with, cannabis that is possessed, produced, or cultivated by a person 21 years of age or older. Such proximity or contact could negatively impact those under 21, especially children. It is recommended that the initiative include reasonable restrictions for the storage and ingestion of medical cannabis when children are present in the home or elsewhere.

Finally, the initiative does not address the legality of paraphernalia used in conjunction with the storage or ingestion of medical cannabis. It is recommended that the initiative add a provision making the use of paraphernalia for the storage or ingestion of medical cannabis legal if done with within the Act's authorization.

E. Conclusion

The above review discusses considerations and proposed alterations for the initiative; for example, re-designating the proposed Act as I.C. § 37-2732E *et. seq*., using the word "marijuana" instead of "cannabis," deleting Sections 2 and 3 for violating the single-subject rule, and possible constitutional violations for limiting initial medical cannabis production licenses to those with consecutive industrial hemp licenses. In reviewing the initiative's impact on Idaho in a more general sense, the following observations are offered.

Passage of the initiative would make marijuana possession and use much more prevalent in Idaho. The Act provides such broad and subjective definitions about what constitutes a "substantial health condition" that just about anyone could qualify to obtain a medical cannabis card. Conditions such as "anxiety, insomnia, acute pain … and chronic and persistent pain" would be easy to assert, but difficult to verify. *See* Prop. I.C. § 37-3502(9). Therefore, the number of people using marijuana in their homes would greatly increase, as would the health risks to children present.

A serious flaw with the Act is that it fails to place any limits on how much marijuana can be produced, stored, transported, or possessed at any given point by anyone within the Act's authority. Without any way to monitor the quantity of marijuana possessed by persons authorized under the Act, marijuana could easily be illegally diverted to outsiders. For example, a cardholder could sell "medical

cannabis" to outsiders without any way to track the marijuana to ensure it stays within the Act's purposes. The Act's failure to limit how much medical cannabis a cardholder or any other actor can possess would allow them to illegally sell and deliver marijuana, in any amount, to the general public.

In sum, the Act, if passed, would greatly increase the prevalence and use of marijuana in Idaho – almost to the point of it being entirely legalized under Idaho law.

CERTIFICATION

I HEREBY CERTIFY that the enclosed measure has been reviewed for form, style, and matters of substantive import. The recommendations set forth above have been communicated to the Petitioner via a copy of this Certificate of Review, sent to Jeremy C. Chou, Attorney at Law, Givens Pursley LLP, by e-mail to jcc@givenspursley.com, and by Unites States Postal Service to Jeremy C. Chou, Attorney at Law, Givens Pursley LLP, to 601 W. Bannock Street, P.O. Box 2720, Boise, ID 83701.

Sincerely,

Raúl R. Labrador

RAÚL R. LABRADOR
Attorney General

Analysis by:

John C. McKinney
Deputy Attorney General