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# Not to Be Blunt, but Consumers Demand Weed with Their Pizza: Model Legislation for Marijuana Courier and Home Delivery Services

*London Ryyananen England\**

## I. INTRODUCTION

In states with recreational or medicinal marijuana legislation, purchasers want a safe, legal method to purchase weed. In the “there’s an app for that!” era, more consumers than ever want to purchase weed from the comfort of their couch.

No one wants to furtively shove cash into a stranger’s hands on a park bench. If a city has no commercial space for buying weed, getting it delivered at home seems like the next safest choice. Too bad weed delivery is still illegal—even in most places where marijuana is commercially available.<sup>1</sup>

Municipalities should enact legislation enabling legal marijuana delivery to avoid the risks of back-alley drug dealing and requiring purchasers to drive to their local dispensaries, often under the influence.

We stand at the intersection of America’s rapid decriminalization and legalization of marijuana and a boom in to-your-door delivery services. Technology often outpaces the legal system and entrepreneurs are not waiting. Apps are already springing up to service pot-smokers nationwide. This comment suggests that states should proactively enact marijuana delivery laws modeled on existing legislation which allows delivery of alcohol direct-to-consumer. But, at present, no state-wide legislation provides for *legal* delivery of weed. This comment includes model legislation the author drafted, designed to enable states to issue individual couriers licenses for employees of dispensaries, for the purpose of legal marijuana delivery.

This comment begins with an introduction to the present state of the law and the current assortment of at-home delivery apps, both for alcohol and marijuana. The first section summarizes the present state of marijuana laws throughout the United States, describing the differences between decriminalization and legalization, as well as an introduction to full legalization and taxation. This comment is not an in-depth fifty-state analysis but is intended

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1. Amanda Chicago Lewis, *Your “Uber But For Weed” App is Probably Illegal*, BUZZFEED NEWS (Apr. 30, 2015, 3:32 PM), [https://www.buzzfeed.com/amandachicagolewis/your-pot-delivery-app-is-probably-illegal?utm\\_term=.xvz5vGqXy#.sXLpGYIMm](https://www.buzzfeed.com/amandachicagolewis/your-pot-delivery-app-is-probably-illegal?utm_term=.xvz5vGqXy#.sXLpGYIMm).

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to give the reader background on the present state of law. The first section also introduces present liquor-delivery laws which provide for the same scrutiny of age, sobriety, and accurate identification, which is required when consumers purchase alcohol at a bar or liquor store. This section then summarizes the apps presently on the market for the purchase of controlled substances, both liquor and marijuana. Given the constantly changing business of apps and the startup economy, this comment does not address individual business models in detail. Instead, the author examines these apps as a model for what is possible and what is being tried both legally and illegally.

In the second section, the author proposes a model for legislative change which allows for mobile weed delivery direct-to-consumer. In this section, the author offers the requirements for verification, notes on who is liable in the event of selling to a minor or an already intoxicated person, and limitations on marijuana delivery apps in the present patch-work of weed legislation.

Finally, in the third section, the author proposes Model Legislation that incorporates the necessities addressed above. The model rule focuses on the face-to-face requirements for sale, verification of the purchaser, and liability. This model does not include tax implications or criminal penalties for mishandling of controlled substances. Throughout the Model Legislation, the author explains the purposes behind each provision, below each Article.

As Thomas Fuller suggested, “[t]o the red-and-blue map of American politics, it may be time to add green.”<sup>2</sup> Legislators should get ahead of the app developers and implement laws to promote safe, controlled, legal marijuana distribution directly to the homes of consumers.

## II. SUMMARY OF MARIJUANA LAWS

Over the last five years, American marijuana law has transformed from a nearly universal prohibition on marijuana possession, use, and sale to a patchwork of legislation with varying degrees of prohibition and legalization. Standards for how legalization is implemented ranges from full legalization, to medical marijuana laws, to laws that limit or eliminate the criminal penalties for marijuana possession.<sup>3</sup>

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2. Thomas Fuller, *Election May be a Turning Point for Legal Marijuana*, N.Y. TIMES (Oct. 24, 2016), [https://www.nytimes.com/2016/10/25/us/marijuana-legalization-ballot-measures.html?\\_r=1](https://www.nytimes.com/2016/10/25/us/marijuana-legalization-ballot-measures.html?_r=1).
  3. *See Nevada Laws & Penalties*, NORML, <http://norml.org/laws/item/nevada-penalties-2> (last visited Feb. 2, 2018) (demonstrates Nevada has one of the most diverse marijuana laws by showing several types of legalization, decriminalization, and criminal penalties. Nevada law includes mandatory minimum sentences for some marijuana related offenses, conditional release provisions for others, decriminalized marijuana possession and use within specific set limits, and legalized hemp use and research. Nevada also legalized medical marijuana and marijuana for personal use; however, it has a per se driving under the influence law for those caught driving while using marijuana.).

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At the time of publication, personal recreational use of marijuana is legal in seven states and Washington D.C.<sup>4</sup> Twenty-nine states allow medical marijuana use.<sup>5</sup> Several states allow patients with medical marijuana licenses or prescriptions to grow a limited number of marijuana plants for personal use.<sup>6</sup> Seventeen states decriminalized possession of small amounts of weed.<sup>7</sup> But even in states where marijuana is legal for personal use, there are criminal penalties for possession of weed in excess of authorized amounts.<sup>8</sup>

Despite the relaxation of state marijuana laws, marijuana possession and use remains illegal under federal guidelines.<sup>9</sup> Historically, the federal government has “not devoted [its] finite resources to prosecuting individuals in federal court whose conduct is limited to possession of marijuana for personal

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4. See COLO. CONST. art. XVIII, § 16, cl. 3; ALASKA STAT. §§ 17.38.020, 17.38.040 (2014); CAL. HEALTH & SAFETY CODE §§ 11357, 11362.1 (West 2017); MASS. GEN. LAWS. ANN. ch. 94C, § 34 (West 2015); NEV. REV. STAT. ANN. § 453.321 (West 1999); NEV. REV. STAT. ANN. § 453.337 (West 1997); NEV. REV. STAT. ANN. § 453.339 (West 2015); WASH. REV. CODE ANN. §§ 69.50.4013–.4014, 69.50.430 (West 2017); D.C. CODE ANN. § 48-904.01 (West 2015).
5. See *29 Legal Medical Marijuana States and DC*, PROCON.ORG, <https://medicalmarijuana.procon.org/view.resource.php?resourceID=000881> (last visited Feb. 2, 2018).
6. See COLO. CONST. art. XVIII, § 14; ALASKA STAT. ANN. § 17.37.010 (West 2010); ALASKA STAT. ANN. §§ 17.37.030–.040, 17.37.060 (West 1999); ALASKA STAT. ANN. § 17.37.070 (West 2009); ALASKA STAT. ANN. § 17.37.080 (West 1998); CAL. HEALTH & SAFETY CODE §§ 11362.7, 11362.83 (West 2017); CAL. HEALTH & SAFETY CODE § 11362.5 (West 1996) (also known as the Compassionate Use Act of 1996); COLO. REV. STAT. ANN. § 18-18-406.3 (West 2015); COLO. REV. STAT. ANN. § 25-1.5-106; § 25-1.5-106(2), (10) (West 2017); NEV. REV. STAT. ANN. §§ 435A.080(1)(a), (2), 435A.250(2), 453A.010–.240 (West 2017); OR. REV. STAT. ANN. §§ 475B.100, 475B.410, 475B.418 (West 2017); WASH. REV. CODE §§ 69.51A–.51A.901 (West 2017); WASH. REV. CODE §§ 69.51A.010, 69.51A.040 (West 2016); 57 D.C. Reg. 3380 (Apr. 23, 2010). In addition, the following states allow medical marijuana but have not legalized marijuana use generally: Arizona, New Mexico, Montana, Minnesota, Louisiana, Arkansas, Michigan, Illinois, Ohio, Pennsylvania, New Hampshire, Vermont, Maine, New York, Florida, Maryland, Delaware, New Jersey, Connecticut, and Rhode Island. See generally *Interactive Map Diagramming State Marijuana Laws and Penalties*, NORML, <http://norml.org/states> (last visited Feb. 2, 2018).
7. See WASH. REV. CODE ANN. §§ 69.50.4013–.4014, 69.50.430 (2017); WASH. REV. CODE ANN. § 69.50.425 (repealed 2015); see generally *Interactive Map Diagramming State Marijuana Laws and Penalties*, *supra* note 6.
8. See, e.g., WASH. REV. CODE ANN. §§ 69.50.4013–.4014, 69.50.430 (2017); WASH. REV. CODE ANN. § 69.50.425 (repealed 2015).
9. See *Controlled Substances Act of 1970*, 21 U.S.C.A. § 801 (West 2017).

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use on private property.”<sup>10</sup> But, under the Trump administration, the Department of Justice’s mission priorities include eight marijuana-related priorities.<sup>11</sup> Additionally, the Bank Secrecy Act effectively bars most weed businesses from opening or using bank accounts, because banks expose themselves to liability and federal enforcement actions for breaking any federal laws, including federal laws prohibiting marijuana-related businesses as part of the War on Drugs.<sup>12</sup> Federal laws impact the ability of weed service startups to gain traction because it is difficult, if not impossible, for the businesses to open a bank account.<sup>13</sup> But, in spite of the legal hurdles, some forecasters project that marijuana is the fastest growing industry in America.<sup>14</sup>

#### A. States with Legalized or Medical Marijuana

Within legalized marijuana states, the legal limit on possession of marijuana products varies.<sup>15</sup> This is also true in states that have not legalized

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10. David A. O’Neil, Acting Assistant Attorney General, U.S. Dep’t of Justice, *The Enforcement of Federal Enforcement Laws and Decriminalization Efforts in D.C.: Hearing Before the Committee on Oversight & Government Reform, Subcommittee on Government Operations*, U.S. DEP’T OF JUSTICE (presented on May 8, 2014), [https://www.justice.gov/sites/default/files/testimonies/witnesses/attachments/2016/02/22/05-08-14\\_crm\\_oneil\\_testimony\\_re\\_the\\_enforcement\\_of\\_federal\\_marijuana\\_laws\\_and\\_decriminalization\\_efforts\\_in\\_the\\_district\\_of\\_columbia\\_web\\_ready.pdf](https://www.justice.gov/sites/default/files/testimonies/witnesses/attachments/2016/02/22/05-08-14_crm_oneil_testimony_re_the_enforcement_of_federal_marijuana_laws_and_decriminalization_efforts_in_the_district_of_columbia_web_ready.pdf) (last visited Feb. 2, 2018).
11. *See id.*
12. *See* Moises Gali-Velazquez, *Changes Needed to Protect Banking and Financial Services When Dealing with the Marijuana Industry*, LEXISNEXIS (Aug. 3, 2016), <https://www.lexisnexis.com/lexis-practice-advisor/the-journal/b/lpa/archive/2016/08/03/changes-needed-to-protect-banking-and-financial-services-when-dealing-with-the-marijuana-industry.aspx>; *see also* *Frequently Asked Questions: Marijuana and Banking*, AM. BANKERS ASSOC., <http://www.aba.com/Tools/Comm-Tools/Documents/ABAMarijuanaAndBankingFAQFeb2014.pdf> (last visited Feb. 2, 2018).
13. Sophie Quentin, *Why Marijuana Businesses Still Can’t Get Bank Accounts*, PEW CHARITABLE TRUSTS (Mar. 22, 2016), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/03/22/why-marijuana-businesses-still-cant-get-bank-accounts>.
14. Jennifer Kaplan, *Cannabis Industry Expected to Be Worth \$50 Billion by 2026*, BLOOMBERG (Sept. 12, 2016, 1:58 PM), <https://www.bloomberg.com/news/articles/2016-09-12/cannabis-industry-to-expand-to-50-billion-by-2026-analysts-say>.
15. *See* COLO. CONST. art. XVIII, § 16, cl. 3 (Colorado law allowing less than one ounce); *see also* ALASKA STAT. ANN. §§ 17.38.020, 17.38.040 (West 2017) (Alaska law allowing up to one ounce within a residence).

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recreational marijuana, but allow medicinal marijuana.<sup>16</sup> Typically, under both recreational legalization and medicinal marijuana legislation, users may possess one ounce of marijuana and up to six plants at home for personal use.<sup>17</sup> In all states, marijuana is classified as a controlled substance.<sup>18</sup> No states allow possession of unlimited or large quantities of marijuana.<sup>19</sup> Because the federal and state governments worry about the dangers of drug dealers and narcotics distribution, the limitation on the quantity of marijuana is designed to prevent those individuals with authorized use from becoming distributors themselves.<sup>20</sup>

In the absence of state oversight of marijuana sales, small-business owners have gotten creative while attempting to turn a profit on marijuana. For example, in Washington D.C. recreational marijuana is legal.<sup>21</sup> But the sale of marijuana is not.<sup>22</sup> “[Washington D.C.]’s Initiative 71, passed in 2014, legalized only home cultivation, possession, and sharing ‘without remuneration.’”<sup>23</sup> High Speed Delivery, a Washington D.C. based fresh juice company, attempted to manipulate this loophole by only offering fresh juices for sale—while accepting donations that may be exchanged for marijuana.<sup>24</sup>

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16. See generally HAW. REV. STAT. ANN. §§ 329-121–128 (West 2017); HAW. REV. STAT. ANN. § 329-123(b), (c) (LexisNexis 2017) (Hawaii statutes allowing up to seven marijuana plants in a residence); see also *Illinois Medical Cannabis Registry Pilot Program*, ILLINOIS DEP’T OF PUB. HEALTH, <http://www.dph.illinois.gov/sites/default/files/publications/mid-year-data-report-january-2016-040616.pdf> (last visited Feb. 2, 2018) (Illinois pilot program allowing patients to register for medical cannabis).
17. See, e.g., WASH. REV. CODE ANN. §§ 69.50.4013, 69.50.360(3) (West 2017).
18. See, e.g., OR. REV. STAT. ANN. § 475B.005 (West 2016); OR. ADMIN. R. 855-080-0022 (2017).
19. See generally *Interactive Map Diagramming State Marijuana Laws and Penalties*, *supra* note 6.
20. Josh Ingold, *A Colorado Marijuana Guide: 64 Answers to Commonly Asked Questions*, DENVER POST (Dec. 31, 2013, 5:35 AM), <http://www.denverpost.com/2013/12/31/a-colorado-marijuana-guide-64-answers-to-commonly-asked-questions/>.
21. D.C. CODE § 48-904.01 (2017).
22. Marin Cogan, *Marijuana is Now Legal in Washington, D.C.—So Why Is No One Acting Like It?*, N.Y. MAG. (Dec. 11, 2015, 9:43 AM), <http://nymag.com/daily/intelligencer/2015/12/washington-dc-americas-least-fun-pot-mecca.html>.
23. Jacob Sullum, *Exchanging Marijuana ‘Gifts’ for ‘Donations’ Is Not, Alas, Legal in D.C.*, FORBES (Apr. 14, 2016, 7:34 AM), <http://www.forbes.com/sites/jacobsullum/2016/04/14/exchanging-marijuana-gifts-for-donations-is-not-alas-legal-in-d-c/#633a34b07c00>.
24. Rachel Kurzius, *5 Ways To Get Weed Delivered To Your Doorstep in D.C.*, DCIST (Sept. 16, 2016, 1:21 PM), [http://dcist.com/2016/09/weed\\_delivery\\_in\\_dc.php](http://dcist.com/2016/09/weed_delivery_in_dc.php).

Similarly, Kush Gods offers a donation based service, “[t]he law says it’s legal to give [marijuana] away,” Kush Gods CEO Nicholas Cunningham said, “so [cannabis consumers] donating to the company is just them excited about what’s going on.”<sup>25</sup> Unfortunately for these up-and-coming entrepreneurs, these donation exchanges were deemed sales, or remuneration, by the Washington D.C. justice system, and Kush Gods CEO Cunningham and an associate were arrested.<sup>26</sup>

In states like Colorado, where medicinal and recreational marijuana is for sale through registered dispensaries, you may legally gift marijuana, but you may not engage in a “donation” based or exchange system.<sup>27</sup> Adults may “give away up to an ounce of cannabis without remuneration. Remuneration includes any compensation or trade,” one Denver police officer stated, “so in other words, you can gift it to someone when that transfer is not part of a tit-for-tat exchange. Otherwise you are in violation of the criminal law.”<sup>28</sup>

States have also attempted to manage distribution through taxes and tax stamp requirements on marijuana for medicinal or recreational use, and through careful oversight of dispensaries selling marijuana.<sup>29</sup> Tax stamps are sold by states and must be affixed to marijuana, or imprinted directly on THC edibles, typically at the dispensary.<sup>30</sup> Tax stamps are designed to help track and generate tax revenue while deterring criminal enterprises.<sup>31</sup> The excise tax on cannabis products ranges from thirty-seven percent in Washington state to proposed legislation in Maine that would tax purchasers at ten percent.<sup>32</sup> State revenue generated by marijuana sales is enormous, topping

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25. Sullum, *supra* note 23 (internal punctuation edited for clarity).

26. *Id.*

27. *Id.*

28. Ricardo Baca, *This Weed on Wheels Marijuana Delivery Service Says It’s Legal—But Actually It’s Not*, CANNABIST (Jul. 28, 2016, 6:08 AM), <http://www.thecannabist.co/2016/07/28/marijuana-delivery-service-weed-on-wheels/59570/> (internal punctuation edited for clarity).

29. *See Marijuana Tax Stamp*, NORML, <http://norml.org/component/zoo/category/marijuana-tax-stamp-laws-and-penalties> (last visited Feb. 2, 2018); *see also Marijuana Enforcement*, COLO. DEP’T OF REVENUE, ENF’T DIV., <https://www.colorado.gov/pacific/enforcement/marijuanaenforcement> (last visited Feb. 2, 2018).

30. *See Marijuana Tax Stamp*, *supra* note 29.

31. Joseph Henschman & Morgan Scarborough, *Marijuana Legalization and Taxes: Lessons for Other States from Colorado and Washington*, TAX FOUND. (May 12, 2016), <http://taxfoundation.org/article/marijuana-legalization-and-taxes-lessons-other-states-colorado-and-washington>.

32. *Id.*

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\$113 million in revenue in Colorado alone in 2014.<sup>33</sup> In addition, retailers also pay a licensing fee to the state in order to legally sell marijuana as a dispensary.<sup>34</sup> Licensing fees in Colorado range from \$1,750.00 for a license to grow marijuana for retail cultivation to the tens of thousands of dollars for licensing new medical distribution centers.<sup>35</sup>

In most states, customers looking to purchase marijuana must buy it from a licensed dispensary.<sup>36</sup> In some states, dispensaries are “dual,” meaning that they sell to both recreational and medical clients, while in other states dispensaries may only sell to one type of clientele.<sup>37</sup> Dispensaries must follow state-wide guidelines for operation, but are also limited by city wide ordinances.<sup>38</sup> For example, in Colorado, marijuana dispensaries are allowed to operate between seven in the morning and midnight, but some cities further limit the hours of operation.<sup>39</sup> Dispensaries must also follow local zoning ordinances and are typically monitored under the local food and drug code.<sup>40</sup>

Business owners seeking to be licensed as dispensaries must also meet vigorous standards themselves.<sup>41</sup> Owners must submit applications with the appropriate jurisdiction’s licensing authority, which seeks information regarding both the business and extensive personal information about the busi-

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33. *Id.*; see also *Marijuana Tax Data*, COLO. DEP’T OF REVENUE, <https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data> (last visited Feb. 2, 2018).

34. See *Medical Marijuana Fees*, COLO. DEP’T OF REVENUE, <https://www.colorado.gov/pacific/sites/default/files/MED%20Fee%20Table%20Color%20May%202017%20%281%29.pdf> (last visited Feb. 2, 2018).

35. *Id.*

36. See *Where to Buy Marijuana in Colorado: Recreational and Medical Marijuana Stores*, COLO. POT GUIDE, <https://www.coloradopotguide.com/where-to-buy-marijuana/> (last visited Feb. 2, 2018).

37. See Jayson Chesler, *Washington Merges Recreational and Medical Marijuana to Stop Illegal Sales*, NEWS 21: AMERICA’S WEED RUSH (Aug. 15, 2015), <http://weedrush.news21.com/washington-merges-recreational-and-medical-marijuana-to-stop-illegal-sales/>.

38. See, e.g., Ingold, *supra* note 20; see also *Medical and Retail Marijuana Businesses: Glendale Medical and Retail Business License Application*, CITY OF GLENDALE, <http://www.glendale.co.us/index.aspx?nid=393> (last visited Feb. 2, 2018).

39. See Ingold, *supra* note 20.

40. See *id.*

41. See, e.g., *Medical Marijuana Establishment Information*, CLARK COUNTY NEV., <http://www.clarkcountynv.gov/business-license/Pages/MedicalMarijuanaEstablishments.aspx> (last visited Feb. 2, 2018).



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ness owners and managers.<sup>42</sup> For example, in Colorado, business owners must be twenty-one years of age, have no prior felony convictions, be of good moral character, and must obtain an MED Occupational License.<sup>43</sup> MED Occupational Licenses cost between seventy-five dollars for support employees and two-hundred-fifty dollars for key employees who make operational decisions.<sup>44</sup> MED Occupational Licenses require criminal background checks and fingerprinting.<sup>45</sup>

Marijuana dispensing in states with either medicinal or legalized marijuana sales is a heavily regulated business.<sup>46</sup> But not all of the regulations make sense. In areas like Washington D.C.—where use and possession are legal, but sales are not—consumers and local business owners frequently break the law.<sup>47</sup> Governments need to get one step ahead of entrepreneurs by legalizing marijuana delivery services to prevent businesses from operating in a legal haze. Legalization of marijuana delivery undercuts the unlicensed drug dealers and may help put them out of business. Additionally, legalization allows for additional tax revenue for states, while the state continues to focus on public safety legislation and protocols.

## B. Example of Liquor Delivery Legality

Alcohol, like marijuana, is a controlled substance.<sup>48</sup> Consumers are not allowed to purchase alcohol until the age of twenty-one, and states require person-to-person sales.<sup>49</sup> But, unlike marijuana, many states have authorized delivery of alcohol directly to the consumer, subject to the same or similar rules that liquor stores must follow during in-store sales.<sup>50</sup> Alcohol delivery is permitted in many forms nationwide. Some states allow food-service businesses to deliver alcohol as part of their business; some states allow liquor stores themselves to deliver alcohol directly to their consumers, some states

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42. *See id.*; *see also Marijuana Pre-Suitability Application*, COLO. DEP'T OF REVENUE, <https://www.colorado.gov/pacific/sites/default/files/Pre-Suitability%2004112017.pdf> (last visited Feb. 2, 2018).

43. *See Marijuana Pre-Suitability Application*, *supra* note 42.

44. *MED Occupational Licensing*, COLO. DEP'T OF REVENUE, <https://www.colorado.gov/pacific/enforcement/med-occupational-licensing> (last visited Feb. 2, 2018).

45. *See id.*

46. *Id.*

47. *See The Facts on DC Marijuana Laws*, METRO. POLICE DEP'T, <https://mpdc.dc.gov/marijuana> (last visited Feb. 2, 2018).

48. *See id.*

49. *See IOWA CODE ANN.* § 123.47 (West 2017).

50. *See Lizzy Alfs & Dave Boucher, New Law Allows for Home Alcohol Delivery*, TENNESSEAN, <http://www.tennessean.com/story/money/2015/05/05/new-law-allows-home-alcohol-delivery/26931803/> (last updated May 5, 2015, 2:02 PM).

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allow third-party delivery from licensed liquor stores, while in others, delivery companies are not required to sell food or open a store front to legally deliver alcohol.<sup>51</sup>

Many local ordinances require delivery services to operate under the same standards as restaurants and liquor stores. For example, in 2015, Tennessee expanded food delivery laws to allow businesses who generate at least fifty percent of their income from food deliveries to also deliver alcohol.<sup>52</sup>

Companies can deliver up to 1 gallon of alcohol per customer per delivery, and delivery drivers must require customers to show a valid form of identification, according to the legislation. Drivers delivering alcohol must also be 21 years old and pass a criminal background check . . . . Delivery service companies and drivers will have to obtain a state license to deliver alcohol.<sup>53</sup>

This new legislation opened the door for apps to launch home delivery services for alcohol, including Grub Hub, Order Up, and Delivery Dudes.<sup>54</sup> Nationwide, these web-based services are growing with websites and apps jumping in to help deliver alcohol to thirsty people in their cities.<sup>55</sup>

In some states, apps and other web-based platforms are replacing the traditional liquor store format by operating directly to consumers and eliminating the need for a storefront.<sup>56</sup> Philadelphia-based goBooze (owned by goPuff, a “420 friendly” business) opens distribution facilities in the cities where it launches its app in order to sell consumers liquor from its own in-

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51. See *id.*; Leeanne Griffin, *Liquor-Delivery Service Drizly Enters Connecticut Market*, HARTFORD COURANT (Dec. 1, 2015, 4:35 PM), <http://www.courant.com/features/food/hc-drizly-liquor-delivery-service-connecticut-20161201-story.html>; *About Us*, DRIZLY, <https://drizly.com/about-us/e-594c4a6ff3342911> (last visited Feb. 2, 2018); Arianna Auber, *Gobooze Launches in Austin as Newest Alcohol Delivery Service*, AUSTIN360: SPIRITS BLOG (Dec. 13, 2016), <http://spirits.blog.austin360.com/2016/12/13/gobooze-launches-in-austin-as-newest-alcohol-delivery-service/>; Anna Marum, *420-Friendly App Brings Alcohol Delivery to Portland*, OREGONIAN: OREGONLIVE, [http://www.oregonlive.com/window-shop/index.ssf/2016/12/gopuff\\_alcohol\\_delivery\\_portland.html](http://www.oregonlive.com/window-shop/index.ssf/2016/12/gopuff_alcohol_delivery_portland.html) (last updated Dec. 13, 2016, 3:03 PM).

52. See Alfs & Boucher, *supra* note 50.

53. *Id.*

54. See *id.*

55. See Stan Greene, *What Could Possibly Go Wrong? Doordash Begins Delivering Alcohol*, SANTA MONICA OBSERVER (July 13, 2016), <http://www.smobserved.com/story/2016/07/13/business/what-could-possibly-go-wrong-doordash-begins-delivering-alcohol/1551.html>.

56. See Marum, *supra* note 51; see also Auber, *supra* note 51.

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ventory.<sup>57</sup> When goBooze launched in Austin, Texas, it entered a crowded market of other liquor delivery services including “Delivery.com (which acquired BrewDrop), Thirstie, Minibar, TopShelf, Burpy, Drizly and Couch Potato ATX.<sup>58</sup> Most of those services partner with local distributors, essentially offering the ordering platform and leaving delivery to the individual liquor stores and their employees.”<sup>59</sup> While goBooze delivers from its own warehouse to the consumer, other app platforms, like Drizly, sell their app platform itself to liquor stores and businesses.<sup>60</sup> Using Drizly as a marketing tool, businesses can sell and deliver their products to consumers without needing to build or market their own mobile app.<sup>61</sup> Apps vary by region and market, even by zip code, and like many new app concepts are quickly undergoing both growth and mergers.<sup>62</sup>

Sales and age verification techniques have gone smart-phone-savvy as well. Smart-phone delivery apps built in a series of tests and questions to guarantee that the driver is selling to a legal purchaser.<sup>63</sup>

The technology uses forensics and a scanner to determine whether the identification card, which has to be produced upon the driver’s delivery, is legit or not. The driver uses human functions to determine if the customer is in the right state of mind to make a purchase. So, there’s technology to nix fake IDs and red-blooded humans to determine at their own discretion whether or not a person is already too drunk or is being the designated Keystone Lite buyer for underage[d] kids.<sup>64</sup>

Drivers, and the companies they work for, are incentivized to carefully scrutinize IDs because dispensaries face the same liabilities for service to minors

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57. See Brent Wistrom, *Austin Gets a New On-Demand Booze Delivery Service*, AUSTININNO (Dec. 13, 2016), <http://austininno.streetwise.co/2016/12/13/austin-alcohol-delivery-gobooze-enters-crowded-beer-wine-and-liquor-market/>.

58. See *id.*

59. *Id.*

60. See *About Us*, DRIZLY, *supra* note 51; Kurt Schlosser, *Alcohol Delivery Startup Drizly Wants to Drink Amazon Under the E-Commerce Table, Adds Next-Day Delivery*, GEEKWIRE (May 5, 2016, 12:29 PM), <http://www.geekwire.com/2016/drizly-alcohol-app/>.

61. See H. Drew Blackburn, *Drizly, A Beer and Liquor Delivery App, Makes Its Way to Dallas*, DALL. OBSERVER (Jun. 10, 2015, 10:03 AM), <http://www.dallasobserver.com/music/drizly-a-beer-and-liquor-delivery-app-makes-its-way-to-dallas-7301234>.

62. See Matt Novak, *My Lazy, Drunken Quest to Find the Best Alcohol Delivery App*, GIZMODO (Feb. 26, 2016, 4:20 PM), <http://gizmodo.com/my-lazy-drunken-quest-to-find-the-best-alcohol-deliver-1759784584>.

63. See Blackburn, *supra* note 61.

64. *Id.*

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and over-serve that liquor stores and bars do.<sup>65</sup> Parents worry because they believe the responsibility for checking IDs upon delivery of alcohol to homes should not fall on the shoulders of “the guys making \$8 an hour on their bikes delivering it.”<sup>66</sup> In fact, a New York City ABC news affiliate investigated alcohol delivery through the Postmates app and the fresh-faced twenty-six year old news anchor was asked for her driver’s license only *after* she mentioned IDs.<sup>67</sup> But, many app developers have gotten craftier since this investigation by requiring mandatory click-through and scan screens for drivers to verify the identity of customers on all deliveries involving alcohol.<sup>68</sup>

At this time, it is currently unclear exactly what punishment cities and states would levy on alcohol delivery services caught selling to minors.<sup>69</sup> Each municipality governs its own punishments, which may range from ineligibility of employees to work in alcohol sales to temporary or even permanent closure of businesses which violate the law.<sup>70</sup>

The marketplace is crowded with apps marketing liquor and marijuana delivery services.<sup>71</sup> In states where the law is unclear or explicitly bans liquor delivery, liquor delivery startups are working directly with their state legislatures to legalize alcohol delivery.<sup>72</sup> In 2015, several municipal laws were passed explicitly authorizing home delivery of alcohol.<sup>73</sup> The new laws do not affect “dry counties” where alcohol may not be sold; purchasers cannot

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65. *See id.*

66. Michelle Charlesworth, *Phone Apps that Home Deliver Alcohol Pose New Worry for Parents*, ABC7NY (Nov. 18, 2015), <http://abc7ny.com/technology/not-carding-apps-that-home-deliver-alcohol-pose-new-worry-for-parents/1090225/>.

67. *See id.*

68. *See* Greene, *supra* note 55.

69. *See* Susan Spencer, *Village Dairy in Grafton Fails to Get Liquor License*, WORCHESTER TELEGRAM (last updated Dec. 21, 2015, 5:52 PM), <http://www.telegram.com/news/20161220/village-dairy-in-grafton-fails-to-get-liquor-license> (refused liquor license for past violations).

70. *Id.*

71. *See* Ryland Barton, *Lawmakers Consider Whether to Allow Home Delivery of Alcohol*, WFPL KY. PUB. RADIO (Sept. 5, 2016), <http://wfpl.org/lawmakers-consider-whether-to-allow-home-delivery-of-alcohol/>; *see also* Jessica Floum, *Need Pot but Can’t Leave the House? Marijuana Delivery Coming to Portland*, OREGONIAN: OREGONLIVE (Dec. 21, 2016, 6:33 PM), [http://www.oregonlive.com/politics/index.ssf/2016/12/marijuana\\_delivery\\_coming\\_to\\_p.html](http://www.oregonlive.com/politics/index.ssf/2016/12/marijuana_delivery_coming_to_p.html).

72. Barton, *supra* note 71.

73. *See* Alanna Autler, *New Law Makes Way for Alcohol Delivery*, MS NEWS NOW, <http://www.msnewsnow.com/story/28976597/new-law-makes-way-for-alcohol-delivery> (last updated May 18, 2015, 10:26 PM).

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circumvent local ordinances by asking drivers to cross dry county lines with purchases from wet counties.<sup>74</sup>

Liquor delivery apps generate a lot of attention and high-dollar financing in the angel investment and startup fields.<sup>75</sup> Apps like Drizly generate tens of millions of dollars in angel investments and are managed within startup incubators who are looking to foster businesses in the next untapped market.<sup>76</sup>

Many investors already believe that marijuana will generate big business.<sup>77</sup> Greenwave Advisors estimates that the marijuana industry could generate \$25 billion dollars by 2021; Cowen and Company estimates that by 2026 the marijuana industry could be worth \$50 billion.<sup>78</sup> Some marijuana-related companies trade on the stock exchange now, including GW Pharmaceuticals (NASDAQ: GWPH), Corbus Pharmaceuticals Holdings (NASDAQ: CRBP), and Insys Therapeutics (NASDAQ: INSY).<sup>79</sup> All three are pharmaceutical manufacturers who utilize marijuana-compound cannabidiol in the creation of therapeutic treatments.<sup>80</sup> As more states legalize marijuana for recreational and medical purposes investors will continue to look for ways to cash in on the big business of marijuana.<sup>81</sup>

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74. See Jeremy Gray, *Alabama Alcohol Laws, Attitudes Rapidly Changing*, ALA. MEDIA GRP., [http://www.al.com/news/index.ssf/2015/07/alabama\\_alcohol\\_laws\\_\\_\\_and\\_at.html](http://www.al.com/news/index.ssf/2015/07/alabama_alcohol_laws___and_at.html) (last updated July 10, 2015, 8:05 AM).
75. See generally Curt Woodward, *Liquor-Delivery Startup Drizly Laps Up \$15M in New Funding*, BOS. GLOBE (Aug. 4, 2016), <https://www.bostonglobe.com/business/2016/08/04/liquor-delivery-startup-drizly-adds-investment/egjBle0WUQsfE8ojWHLsL/story.html>.
76. See Larissa Faw, *Mcgarrybowan 'Forges' Ahead with Startup Unit*, MEDIAPOST AGENCY DAILY (Jan. 10, 2017), <http://www.mediaposwswt.com/wpublicationws/article/292586/mcgarrybowen-forges-ahead-with-start-up-unit.html>; see also Woodward, *supra* note 75.
77. Todd Campbell, *Here's How Big the Opportunity Could Be for Marijuana Stocks*, FOX BUS. (Jan. 14, 2017), <http://www.foxbusiness.com/markets/2017/01/14/here-how-big-opportunity-could-be-for-marijuana-stocks.html>.
78. *Id.*
79. *Id.*; see *Products & Pipeline*, GW PHARMACEUTICALS, <https://www.gwpharm.com/products-pipeline> (last visited Feb. 2, 2018); CORBUS PHARMACEUTICALS, <http://www.corbuspharma.com/> (last visited Feb. 2, 2018); INSYS THERAPEUTICS, INC., <http://www.insysrx.com/> (last visited Feb. 2, 2018).
80. See *Products & Pipeline*, *supra* note 79; CORBUS PHARMACEUTICALS, *supra* note 79; INSYS THERAPEUTICS, INC., *supra* note 79.
81. See Ian Lovett, *In California, Marijuana is Smelling More Like Big Business*, N.Y. TIMES (Apr. 11, 2016), [https://www.nytimes.com/2016/04/12/us/in-california-marijuana-is-smelling-more-like-big-business.html?\\_r=1](https://www.nytimes.com/2016/04/12/us/in-california-marijuana-is-smelling-more-like-big-business.html?_r=1).

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In spite of the questionable legality, investors and entrepreneurs are launching marijuana delivery apps now.<sup>82</sup> At this time, only Oregon allows marijuana delivery.<sup>83</sup> Oregon began allowing “couriers” in order to expand the participation in the marijuana industry by micro-entrepreneurs.<sup>84</sup> In Portland, Oregon:

Courier businesses can now produce marijuana and other cannabis products but they can sell it only through delivery.

Like other marijuana businesses, couriers need a licensed headquarters within a permitted building in an area where it’s allowed by city zoning rules. All marijuana retailers licensed with the city must first obtain a license from the Oregon Liquor Control Commission.

Couriers cannot sell pot from storefronts. But they can open their licensed headquarters near other marijuana businesses. Traditional retailers and dispensaries must keep their shops at least 1,000 feet apart.<sup>85</sup>

Oregon also regulates the amount of marijuana drivers may carry at any given time to \$3,000, unless drivers operate under a marijuana retailer’s license.<sup>86</sup> While working as a courier, drivers cannot leave the city limits of the municipality that licenses them.<sup>87</sup> Individual cities in Oregon are responsible for licensing and setting limits approving marijuana delivery and courier services.<sup>88</sup>

In states without legal marijuana delivery, apps for marijuana delivery still exist.<sup>89</sup> Large startup incubators like Y Combinator and new, cannabis-related investment companies like Snoop Dogg’s Casa Verde Capital Fund, see huge potential in the future of weed delivery.<sup>90</sup> Delivery services include

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82. *Id.*

83. See Emily G. Brosius, *Oregon Approves Marijuana Home Delivery*, EXTRACT SUNTIMES (Oct. 25, 2015, 2:24 PM), <http://extract.suntimes.com/news/10/153/6071/oregon-approves-marijuana-home-delivery>.

84. Floum, *supra* note 71.

85. *Id.*

86. OR. ADMIN. R. 845-025-2880(4)(g) (West 2017); see also *FAQs: Licensing—Transportation & Delivery*, OREGON.GOV, <https://www.oregon.gov/olcc/marijuana/Pages/FAQs-Licensing-Transportation-Delivery.aspx> (last visited Feb. 2, 2018).

87. See Floum, *supra* note 71.

88. *Id.*

89. Lewis, *supra* note 1.

90. *Id.*

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Canary, Nestdrop, Eaze, Meadow, Nugg, and, formerly, Kush Gods, among others.<sup>91</sup>

Operating in 2015, prior to amendments to Washington state law which made home delivery clearly illegal, Canary delivered weed to several hundred purchasers in the Seattle market.<sup>92</sup> Canary was designed by students at the University of Washington who were inspired by the Starbucks app—which allows users to order drinks from their smartphone and skip the line.<sup>93</sup> After the legislation changed, Canary morphed into Dave; an app helping weed smokers find weed in their area.<sup>94</sup> Canary’s website is now in a holding pattern, collecting email addresses for a future launch when Washington legalizes home delivery of weed.<sup>95</sup>

Websites and apps are live for Eaze, Meadow, and Nugg.<sup>96</sup> The website for Eaze focuses on medical marijuana and features cute graphics of elderly people receiving in-home marijuana delivery.<sup>97</sup> Upon entering Meadow’s website, users are immediately asked whether they have a medical marijuana card, and if users respond that they need one, the users are redirected to a scheduling tool that uses video-chat technology to connect users with medical professionals in their area.<sup>98</sup> Nugg’s website could easily be for a trendy coffee joint, featuring beautiful graphics of a foamy cappuccino on a wood table, next to a smart phone displaying a menu of marijuana.<sup>99</sup> Nugg’s website is unique in that it specifically directs you to which dispensaries deliver in your area, not advertising itself as a delivery service.<sup>100</sup> In this way it is similar to Drizly; both offer a platform for dispensaries to advertise and deliver, without providing drivers or employees, as apps like DoorDash do.<sup>101</sup>

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91. Baca, *supra* note 28; Sullum, *supra* note 23.

92. Taylor Soper, ‘Uber for Pot’ Startup Canary Shuts Down, Merges with In-Store Weed Pickup App, GEEKWIRE (Apr. 23, 2015, 5:36 PM), <http://www.geekwire.com/2015/uber-for-pot-startup-canary-shuts-down-merges-with-in-store-weed-pickup-app/>.

93. *Id.*

94. *Id.*

95. CANARY, <http://canarydelivers.com> (last visited Feb. 2, 2018).

96. EAZE, <https://www.eaze.com> (last visited Feb. 2, 2018); MEADOW, <https://meadowmd.com> (last visited Feb. 16, 2017); NUGG, <https://www.getnugg.com> (last visited Feb. 2, 2018).

97. EAZE, *supra* note 96.

98. MEADOW, *supra* note 96.

99. NUGG, *supra* note 96.

100. *Id.*

101. *Id.*; *see also* DRIZLY, <https://drizly.com/> (last visited Feb. 2, 2018).

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### III. PROPOSAL TO REGULATE MARIJUANA DELIVERY LIKE ALCOHOL DELIVERY

States with medicinal or recreational marijuana laws should regulate marijuana delivery as they do liquor delivery. Public policy groups, including the Drug Policy Alliance, advocate for regulating weed like alcohol or tobacco in order to refocus American laws on “reducing the harms of drug use through a lens of public health, using accurate, fact-based drug education, drug-related illness and injury prevention, and effective drug treatment for problematic use.”<sup>102</sup> The Drug Policy Alliance believes that by regulating drugs the same way as alcohol or tobacco, the United States could fight back against dangerous drug wars, minimize the strain on local law enforcement, and boost tax revenue for states.<sup>103</sup>

The author recommends that states legalizing marijuana in the future follow the Colorado model. In Colorado, every individual employed in a marijuana-related business must be individually screened.<sup>104</sup> As such, the author recommends these states issue specific licenses to employees acting as couriers for marijuana businesses. Applicants for Commercial Drivers licenses are screened for traffic and accident history.<sup>105</sup> Likewise, couriers could receive criminal background checks, as well as traffic and accident history. Also, in an effort to reduce drug-related theft and violence, the author suggests restricting how much cash and marijuana couriers may carry, and suggests that couriers should not be armed while working. The author’s hope is that by reducing the amount of marijuana and cannabis product couriers carry, the personal safety of couriers and the general public would be protected.<sup>106</sup>

Marijuana purchases should also be secure and sold only to their intended recipient. When a pizza delivery driver knocks on a door and nobody answers, nobody is harmed by the neighbor kid purchasing the pizza instead. But there are justifiable fears of the risks of delivering marijuana or alcohol to minors.<sup>107</sup> With that in mind, the author suggests that states implement codes preventing the sale or delivery of marijuana products to anyone other

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102. *Harm Reduction*, DRUG POL’Y ALLIANCE, <http://www.drugpolicy.org/harm-reduction> (last visited Feb. 2, 2018).

103. *Making Economic Sense*, DRUG POL’Y ALLIANCE, <http://www.drugpolicy.org/making-economic-sense> (last visited Feb. 2, 2018).

104. *See Business License Application Process—Medical Marijuana*, COLO. DEP’T OF REVENUE, <https://www.colorado.gov/pacific/enforcement/medical-marijuana-business-license-applicant> (last visited Feb. 2, 2018).

105. *See CDL Federal Requirements*, DMV.ORG, <http://www.dmv.org/cdl-federal-requirements.php> (last visited Feb. 2, 2018).

106. *See generally Drugs & Crime Data: Fact Sheet: Drug-Related Crime*, BUREAU OF JUST. STAT., <https://www.bjs.gov/content/pub/pdf/DRRC.pdf> (describing drug-related crime in America) (last visited Feb. 2, 2018).

107. *See Charlesworth, supra note 66; Impact of Marijuana on Children and Adolescents*, CAL. SOC’Y OF ADDICTION MED. (Sept. 2009), <http://www.csam-asam>



than the legal orderer, who must be twenty-one years of age or older. To combat the problem the Kush Gods faced in Washington D.C., the author further suggests that states explicitly ban “donation” or “exchange” based marijuana delivery.<sup>108</sup> Recipients of marijuana delivery must pay for their own purchase, and show state-issued photo identification that matches the name and photograph of the purchaser.<sup>109</sup> Further, like alcohol, drivers should not be authorized to deliver to recipients who show any signs of intoxication.<sup>110</sup>

Paralleling legal requirements for alcohol, the author recommends that all dispensary-sold marijuana delivered to customers should be delivered in sealed packages, with no “samples,” “donations,” or “freebies.”<sup>111</sup> Packages should be clearly labeled, noting specifically that the package contains marijuana, is not for sale to minors or intoxicated persons, that resale is prohibited, and identifying the dispensary which sold the marijuana.<sup>112</sup> Additionally, similar to present legislation regarding the delivery of alcohol, marijuana couriers should be limited to the jurisdictions in which they are authorized to work. For example, liquor delivery drivers cannot deliver alcohol to dry counties;<sup>113</sup> therefore, a marijuana courier licensed to work only in the city of Portland, Oregon cannot drive to another Oregon city to make a delivery.<sup>114</sup>

As with alcohol sales and marijuana dispensaries, record keeping will be particularly important to couriers. Couriers should record the name and address of the purchaser, as well as log that the courier verified the actual name and address at the time of delivery in order to verify that marijuana is delivered only to the intended recipient.<sup>115</sup> Careful record keeping would also help manage liability and reduce the risk of violations. Penalties for delivery to minors or failure to keep records are modeled on alcohol-related penalties. Penalties could range from fines, the suspension of licenses, or loss of license altogether.<sup>116</sup> For couriers, liability could be imposed when they fail to verify

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[.org/sites/default/files/impact\\_of\\_marijuana\\_on\\_children\\_and\\_adolescents.pdf](#)  
(last visited Feb. 2, 2018).

108. See Sullum, *supra* note 23.

109. See, e.g., OR. ADMIN. R. 845-025-2880(4)(c) (West 2016).

110. See, e.g., WASH. ADMIN. CODE § 314-03-020(8) (West 2016).

111. See, e.g., *id.* § 314-03-020(9)(a).

112. See, e.g., *id.* § 314-03-020(9)(b).

113. See, e.g., ALA. CODE § 28-4-2 (West 2016).

114. See, e.g., OR. ADMIN. R. 845-025-2880(7)(a).

115. See, e.g., *id.* 845-025-2880(5).

116. See, e.g., WASH. ADMIN. CODE § 314-03-020(13).

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the sobriety and age of end users.<sup>117</sup> Dispensaries should also be held accountable for all deliveries of marijuana on its behalf.<sup>118</sup>

#### IV. MODEL LEGISLATION

Below, the author proposes Model Legislation allowing the delivery of Marijuana from licensed dispensaries directly to consumers. This legislation is drafted with states presently licensing dispensaries for medicinal or recreational marijuana sales in mind and intends to fill the gaps on what requirements should be placed on couriers and dispensaries. The proposed legislation attempts to provide clear requirements for who could purchase marijuana, where and how it could be delivered, and which parties hold the liability for failure to ID purchasers or sell to minors. Within the Model Legislation, the author comments on policy considerations driving each section and explains how the various rules aim to minimize concerns of those opposing marijuana delivery, maximize state tax revenue, and efficiently regulate marijuana delivery by the state, rather than local municipalities.

In addition to this Model Legislation, more legislation is necessary to successfully implement legal marijuana delivery services. This comment proposes that state licensing agencies should require background checks and licenses for all marijuana-related employees, including couriers, similar to present regulations in Colorado. Licensing agencies should run both criminal and traffic-related background checks to insure that potential couriers are of good moral character and are licensed drivers without major traffic violations.

The Model Legislation is based on the Washington Administrative Code;<sup>119</sup> the Michigan Administrative Code Rule 436.1511;<sup>120</sup> Michigan Administrative Code Rule 436.1503;<sup>121</sup> and the Colorado Department of Revenue Business License Application Process—Medical Marijuana.<sup>122</sup> Language has been adopted for marijuana-related purposes from these statutes, while some provisions are entirely original and crafted to address public policy concerns.

Additionally, the legislation is drafted with mobile apps in mind. American are smart-phone savvy and the boom in delivery service apps will fuel

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117. *See, e.g., id.* § 314-03-020(7)(b).

118. *See, e.g., id.* § 314-02-020(12).

119. WASH. ADMIN. CODE 314-03-020 (consumer orders, Internet sales, and delivery for grocery stores and beer and wine specialty shops.).

120. MICH. ADMIN. CODE r. 436.1511 (open containers on licensed premises prohibited; exception; consumption of liquor on licensed premises prohibited; exception.).

121. MICH. ADMIN. CODE r. 436.1503 (hours and days of operation.).

122. COLO. REV. STAT. § 12-43.3-307 (persons prohibited as licensees Colo. Rev. Stat. Ann. § 12-43.3-307 (West June 10, 2016)).

the expansion of marijuana delivery, whether it is legal or not. In the Apple iOS App Store, a search of “weed delivery” pulled up dozens of map-based apps to help users find dispensaries nearby,<sup>123</sup> as well as apps specific to individual dispensaries,<sup>124</sup> marijuana-based social media platforms,<sup>125</sup> and reviews of dispensaries and strains.<sup>126</sup>

*Model Legislation: Medical Marijuana Couriers*

Article I. Licensed Marijuana Dispensaries May Deliver Marijuana for Sale

- (1) Marijuana must come directly from a licensed retail location. Licensed retail locations include dispensaries licensed for medicinal or recreational purposes.
- (2) Resale. Marijuana shall not be legal for resale.
- (3) All employees of marijuana dispensaries must receive individual Marijuana Employee Clearance Licenses.
- (4) All couriers for marijuana dispensaries must receive enhanced Marijuana Employee Clearance Licenses for Couriers, requiring criminal background checks and driving record verification.

Presently, only Oregon allows home delivery of marijuana.<sup>127</sup> Article I was inspired by present Oregon and Colorado laws and attempts to address how to implement legal delivery in any jurisdictions with legalization of marijuana. All delivery drivers in Oregon must be employed by the dispensary for whom they deliver.<sup>128</sup> The proposed Model Legislation extends the licensing and employment requirements beyond the requirements enacted in Oregon, and models the Colorado employment requirements. In Colorado, all employees of dispensaries must individually apply for an occupational license, with application fees ranging from \$75.00 to \$250.00 per person, depending on their level of responsibility at the dispensary.<sup>129</sup> Additionally,

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123. *Where's Weed Marijuana Strains & Dispensary Maps*, APPLE, <https://itunes.apple.com/us/app/wheres-weed-marijuana-strains-dispensary-maps/id816490835?mt=8> (last visited Feb. 2, 2018).

124. THE GREEN CROSS MED. MARIJUANA DISPENSARY, <http://thegreencross.org/menu> (last visited Feb. 2, 2018) (a California dispensary).

125. DUBY—WEED SOCIAL NETWORK, <https://www.duby.co/> (last visited Feb. 2, 2018).

126. *Leafly Marijuana Strain and Dispensary Reviews*, APPLE, <https://itunes.apple.com/us/app/leafly-marijuana-strain-and-dispensary-reviews/id416456429?mt=8> (last visited Feb. 2, 2018).

127. See OR. REV. STAT. ANN. § 475.860 (West 2016); OR. ADMIN. R. 845-025-2880.

128. *Id.*

129. See *MED Occupational Licensing & Application Information*, COLO. DEP'T OF REVENUE, <https://www.colorado.gov/pacific/enforcement/med-occupational-licensing> (last visited Feb. 2, 2018).

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requiring couriers to be employees, rather than independent contractors, clarifies liability by dispensaries for the acts of the couriers during delivery.

Requiring individual licensing of each courier should be implemented to allay concerns regarding liability and risk of delivering cannabinoid products to minors. Individual licensing and background checks serve to discourage criminals from applying for work in dispensary or driving positions.<sup>130</sup> Background checks are frequently required in health care positions where employees are handling medication and sensitive patient information on a daily basis, and some authors suggest that further background checks would serve a vital role in health and patient care.<sup>131</sup> Additionally, dispensaries are concerned about security as valuable product leaves the store.

“It’s a cool direction to go, but I think that it requires a lot of legislation. It’s not like delivering pizza,” said Casey Arbogast of Northwest Releaf [when asked about marijuana delivery services]. “I’m sure a lot of people would, you know, love the convenience of delivery, but not everyone is trustworthy.”<sup>132</sup>

Requiring individual licenses for each delivery driver serves employer interests by ensuring that drivers and couriers have passed a state-regulated criminal background check. While not all rejected applicants will obey the law,<sup>133</sup> many will.

Additionally, individually licensing each employee of marijuana-related businesses generates tax and licensing revenues for the state to offset the additional costs of enforcement. In Colorado, annual tax revenue and licensing fees from marijuana related businesses generated \$198.5 million, of which one million dollars was diverted to the Attorney General’s office, including \$286,766 spent on a “special prosecutions” unit.<sup>134</sup> In 2015, the Colorado marijuana industry generated roughly eighteen thousand full-time-equivalent jobs, of which more than twelve thousand were directly employed

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130. See, e.g., *OPM Seeks to Revamp Background Checks*, FEDWEEK (May 4, 2016), <http://www.fedweek.com/issue-briefs/opm-seeks-to-revamp-hiring-background-checks/>.

131. *Using Criminal Background Checks to Inform Licensure Decision Making*, EMORY: NURSING (Apr. 20, 2017, 9:31 AM), [http://nursing.emory.edu/\\_includes/docs/sections/faculty/compliance/fc\\_criminal\\_background\\_checks.pdf](http://nursing.emory.edu/_includes/docs/sections/faculty/compliance/fc_criminal_background_checks.pdf).

132. *Portland, Ore. Eases Regulations to Allow Marijuana Delivery*, WDRB.COM, <http://www.wdrb.com/story/34121768/portland-ore-eases-regulations-to-allow-marijuana-delivery> (last updated Dec. 26, 2016 9:43 AM).

133. See Kirk Mitchell, *Smell of Weed in Denver Leads Feds to Bust in Nebraska Marijuana Network*, DENVER POST, <http://www.denverpost.com/2017/02/17/nebraska-marijuana-network-bust/> (rejected MED occupational license applicant arrested in multi-state, multi-million dollar drug operation) (last updated Feb. 17, 2017 4:49 PM).

134. *Here’s Where Colorado Spends Its Skyrocketing Tax Revenue*, ENTREPRENEUR (Feb. 23, 2017), <https://www.entrepreneur.com/article/289613>.

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in the marijuana industry.<sup>135</sup> While this figure represents a range of jobs in the cannabis field, many of which do not require marijuana licensing, such as security guards, accountants, programmers, and positions in marketing, even conservative estimates place the employment in license-required marijuana-related positions in the thousands.<sup>136</sup> As the cannabis industry continues to grow, and the number of positions available for licensing continues to expand, States may see employment in the tens of thousands and licensing revenue in the millions.<sup>137</sup> States which presently legalize recreational marijuana earn more in tax revenue than they project to spend in additional enforcement as a result of legalization.<sup>138</sup>

Article II. Licensed Dispensaries may not Sell to Persons Under 21 Years of Age

(1) A licensee authorized to sell marijuana to users for medicinal or recreational purposes for consumption off the premises shall not sell to any person unless that person is twenty-one years of age. Any person under twenty-one years of age is prohibited from purchasing, delivering, or accepting delivery of marijuana.

(2) All marijuana couriers must verify the age of the person accepting delivery before handing over liquor. The purchaser must provide a state issued identification card with name and photograph matching the name of the person who placed the order for marijuana.

(3) If no person twenty-one years of age or older is present, or the person who placed the order is not present or their identity cannot be verified with state issued identification, at the time of delivery, the marijuana shall be returned.

(4) Purchasers may only purchase marijuana and cannabis products for personal use. Purchasers may not buy marijuana for others, for third parties, as gifts, or for donation to others.

Like the Oregon statute, this section requires the delivery driver to be responsible for verifying that those individuals purchasing marijuana meet

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135. Adam Orens et al., *The Economic Impact of Marijuana Legalization in Colorado*, MARIJUANA POL'Y GRP. (Oct. 8, 2016), <http://www.mjpolicygroup.com/pubs/MPG%20Impact%20of%20Marijuana%20on%20Colorado-Final.pdf>.

136. *See generally id.*

137. *See id.* (if each employee, of the roughly twelve thousand described in 2015, paid Colorado's \$75 licensing fee for general employees the state would generate \$900,000 or more in licensing fees alone).

138. *See Anna Staver, State Estimates Revenue, Costs for Legalizing Marijuana*, STATESMAN J. (Aug. 6, 2014), <http://www.statesmanjournal.com/story/news/politics/elections/2014/08/05/state-estimates-revenue-costs-legalizing-marijuana/13648351/>.

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state requirements for the use and purchase of marijuana.<sup>139</sup> Additionally, Article II mirrors the Colorado provisions requiring that purchases be for personal use only.<sup>140</sup> Further, Article II requires drivers to be ultimately responsible for ensuring appropriate identification on purchasers. But this is not dissimilar from present laws in many states which require employees of liquor stores and alcohol home delivery services to follow the same rules.<sup>141</sup>

The provisions ultimately favor app-based marijuana delivery services. Where businesses are concerned about liability for delivering to underage persons, businesses implementing security protocols on smartphone apps may divert liability.<sup>142</sup> When the responsibility is placed on purchasers, as with websites for alcohol brands which require users to answer a simple “yes” or “no” question to verify that users are over the age of twenty-one, consumer advocates say this inadequately, and incorrectly, reports users’ true age.<sup>143</sup> In a British survey, where purchasers were required to verify their age prior to home delivery of age restricted goods, more than half of businesses did not check for identification again at the time of delivery.<sup>144</sup> Marijuana businesses could build in real-time, in-person identification checks to the point-of-sale application loaded onto the mobile phones of delivery drivers, as many American alcohol businesses are presently doing.<sup>145</sup> This would help guarantee that drivers check IDs prior to handing over marijuana.

Article III. Intoxication, Delivery Location, and Hours

(1) Delivery of marijuana is prohibited to any person who shows signs of intoxication.

(2) Delivery shall be made only to a residence or business that has an address recognized by the United States postal service. A residence includes a hotel room, a motel room, residences in RV parks, or other similar lodging that temporarily serves as a residence. Residences do not include cars or motor vehicles parked in

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139. See OR. ADMIN. R. 845-025-2880(4)(c).

140. See C.O. CONST. art. XVIII § 14 (2001); COLO REV. STAT. § 25-1.5-106 (2003) (originally enacted as § 25-1-107(1)(jj) (2001); COLO. REV. STAT. § 18-18-406.3 (2001); *id.* § 25-1.5-106 (2), (10).

141. See J. Craig Anderson, *Home Delivery Service for Alcohol Launches in Portland*, PORTLAND HERALD PRESS, <http://www.pressherald.com/2016/04/15/home-delivery-service-for-alcohol-launches-in-portland/> (last updated Apr. 15, 2016).

142. See Greene, *supra* note 55.

143. Ben Rossi, *Why Age Verification Matters to Online Businesses*, INFO. AGE (July 15, 2016), <http://www.information-age.com/why-age-verification-matters-online-businesses-123461697/>.

144. See *id.*; see also Amy Hopkins, ‘Major Concern’ Over Online Alcohol Sales, SPIRITS BUS. (Dec. 9, 2015), <http://www.thespiritsbusiness.com/2015/12/major-concern-over-online-alcohol-sales/>.

145. See, e.g., *About Us*, DRIZLY, *supra* note 51.

temporary locations such as parking lots, or state and national parks.

(3) Delivery may not be made to food-service establishments. Exception: food service establishments which obtain Marijuana Retailer Licensing may receive deliveries of marijuana and cannabis products.

(4)(a) A licensee shall not sell, give away, deliver, or furnish marijuana between the hours of 2 a.m. and 7 a.m. on any day or between the hours of 2 a.m. and noon on Sunday.

(b) Couriers must fully complete delivery and process payments for all marijuana deliveries *prior* to the legal cut-off. Any marijuana “out for delivery” after hours shall be returned to the dispensary.

Refusal of sales to intoxicated persons is already a fixture of most state marijuana and alcohol legislation, but unique to marijuana the author proposes different restrictions on where marijuana may be delivered. While Oregon marijuana businesses are restricted to homes,<sup>146</sup> Article III suggests a broader range of places where marijuana could be delivered. Until marijuana is legalized nationwide, legalized marijuana plays a key role in state tourism.<sup>147</sup>

Restricting delivery to homes and permanent dwellings limits access by tourists, thereby limiting state tax revenues. By allowing delivery to hotels and RV parks tourists would be able to access marijuana at their temporary abodes. Private hotels and RV parks could still set limitations on smoking weed at their own discretion on private property.

Additionally, marijuana delivery hours should be regulated like alcohol delivery hours. These hours vary on a municipal basis, and each community should individually decide whether to tailor their marijuana delivery hours to the full hours of operation that dispensaries may sell, or more restricted hours.

#### Article IV. Sales and Payment

(1) Only dispensary employees may accept and process orders and payments for marijuana and cannabis products. A contractor may not do so on behalf of a licensee, except for transmittal of payment through a third-party service. A third-party service may not solicit customer business on behalf of a licensee.

(2) All orders and payments shall be fully processed before marijuana transfers ownership. In the case of delivery, orders and pay-

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146. See OR. REV. STAT. ANN. § 475.860; OR. ADMIN. R. 845-025-2880(1).

147. See, e.g., Jason Blevins, *Colorado Breaks Tourism Record with 77.7 Million Visitors Spending \$19.1 Billion: Recovery of Colorado's Tourism Economy is Nearly Double that of National Rate*, DENVER POST, <http://www.denverpost.com/2016/07/20/record-colorado-tourism-2015/> (last updated July 21, 2016, 9:55 AM).

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ment must be fully processed before marijuana or cannabis products leaves licensed premises.

(a) Drivers may not carry cash on behalf of the dispensary, nor accept cash payments upon delivery.

(b) Payment methods include, but are not limited to: cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(i) Payment methods do not include donation or exchange. Marijuana may not be given in exchange for donation. Marijuana delivered commercially may only be delivered to lawful purchasers.

(ii) Couriers may not deliver “samples” or “free gifts.” All marijuana and cannabis products delivered must be paid for.

(c) Where orders are placed over the phone or electronically, purchasers of marijuana and cannabis products may not pay in cash. Purchasers wishing for marijuana delivery, who want to pay in cash, must prepay at the dispensary. When purchasers prepay their identification, including photograph and age, will be verified twice: once at purchase, and again on delivery. Purchasers may NOT order marijuana delivery for third parties, as gifts, or as donations to others.

(3)(a) *Internet*. To sell marijuana via the internet, a new license applicant must request internet-sales privileges in his or her application. An existing licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated licensees, as long as the Marijuana Retail License numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(b) *Internet Advertisements*. All online advertisements and sales associated with the sale of marijuana must display a licensee’s registered trade name and Marijuana Retail License number. Failure to display license number may result in fines or suspension of Marijuana Retail License.

Article IV covers a wide variety of necessary policies, ranging from payment rules, designed with safety and crime prevention in mind, to Internet advertisement and sales. Police and business people worry that criminals target marijuana-related businesses.<sup>148</sup> Marijuana dispensaries, both recreational

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148. Aimee Green, *Will Legal Marijuana in Oregon Set Off Surge in Robberies? Police Wait to See*, OREGONIAN: OREGONLIVE (updated Jun. 26, 2015, 5:24 p.m.) [http://www.oregonlive.com/portland/index.ssf/2015/06/will\\_robberies\\_surge\\_as\\_more\\_o.html](http://www.oregonlive.com/portland/index.ssf/2015/06/will_robberies_surge_as_more_o.html).



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and medicinal, have been the target of crimes, such as robbery.<sup>149</sup> Cash is another particularly compelling target for thieves, and businesses like dispensaries can become targets for crime if they handle high volumes of cash.<sup>150</sup> Delivery drivers can be particularly vulnerable to theft, operating alone in neighborhoods, often working from their personal vehicle.<sup>151</sup> One Oregonian opinion author wrote that “in 2011, there were a reported 759 deaths among sales workers and drivers. In contrast, there were 125 deaths among police officers in the same year . . . .”<sup>152</sup> Limiting the cash on hand for delivery drivers minimizes the risk that they may become the target of criminal activity.

Article IV also clarifies payment rules. Specifying the method of payment also addresses businesses like Kush Gods, the D.C. delivery service that exchanged “donations” for weed.<sup>153</sup> If businesses operate on donations within areas where recreational or medicinal marijuana is legal they may attempt to skirt the law—and state excise taxes—through “donation” based exchanges.<sup>154</sup> Article IV(2)(b)(i)–(ii) establishes that donation and exchange-based businesses will be prohibited, thereby eliminating the gray area that Kush Gods and Canary operated in.<sup>155</sup>

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149. See Kirk Mitchell, *Burglars Rip Door off Colorado Springs Marijuana Dispensary But Fail in Theft Attempt*, DENVER POST, <http://www.denverpost.com/2016/12/22/burglars-colorado-springs-marijuana-dispensary-theft-attempt> (last updated Dec. 22, 2016, 9:46 AM).

150. See Rebecca Edwards, *How Small Business Owners Can Protect Themselves Against Theft*, SAFEWISE REPORT (Nov. 10, 2014), <http://www.safewise.com/blog/4-business-theft-statistics-need-know/>.

151. See, e.g., *Thieves Target Pizza Delivery Drivers in North Richmond Neighborhood*, CBS 5 ARIZ., <http://www.cbs5az.com/story/23762578/thieves-target-pizza-delivery-drivers-in-north-richmond-neighborhood> (last updated Nov. 1, 2013, 9:45 PM); Kurt Bresswein, *Alleged Gunman in Eastman Pizza Delivery Robbery Arrested*, LEHIGH VALLEY LIVE, [http://www.lehighvalleylive.com/easton/index.ssf/2017/02/alleged\\_gunman\\_in\\_easton\\_pizza.html](http://www.lehighvalleylive.com/easton/index.ssf/2017/02/alleged_gunman_in_easton_pizza.html) (last updated Feb. 23, 2017, 2:19 AM); Jordan Owen, *Robbers Targeted at Least 7 Package Delivery Trucks This Month*, CHI. SUN TIMES (Dec. 29, 2016, 3:46 PM), <http://chicago.suntimes.com/news/robbers-target-package-delivery-trucks-at-least-seven-this-month/>.

152. *Pot Drivers Might Lose More Than Green*, ADVOCATE (Feb. 16, 2017), <http://www.advocate-online.net/opinion/pot-drivers-might-lose-more-than-green/>.

153. See Sullum, *supra* note 23.

154. See *id.*

155. See *id.*

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Article IV addresses advertising as well. Online advertising is a particular concern for marketing cannabis products to children.<sup>156</sup> Parents for a Drug Free America are concerned:

Advertising that will have the net communication that it's O.K. to use marijuana. And some might argue that the future pool of customers for the legal marijuana industry will be kids and teens since past-month marijuana use—particularly heavy use—has increased significantly among U.S. high school students since 2008.<sup>157</sup>

By focusing on the regulation and approval of online advertising, states can monitor the marketing geared at youth and teens.<sup>158</sup>

Article V. Containers and Packaging

(1) Individual units of marijuana and cannabis products must be sealed in bags, bottles, cans, or other like packaging. Delivery of unsealed or open containers is prohibited.

(2) The outermost surface of any package delivered containing marijuana or cannabis product must have language stating that:

- (a) The package contains marijuana or cannabis product;
- (b) The name, address, and Marijuana Retail License number of the licensed dispensary from which the product is sold;
- (c) The recipient must be twenty-one years of age or older;
- (d) Delivery to intoxicated persons is prohibited; and
- (e) Resale is prohibited.

(3) Couriers may use personal or business vehicles in the delivery of marijuana and cannabis products.

Article V is important for the ongoing battle against corner drug dealers and preventing the emergence of a redistribution black market. Because states continue to enforce maximum possession laws, police continue to monitor the criminal possession and distribution of marijuana.<sup>159</sup> Adding packaging requirements mirroring the requirements for final alcohol sales is designed to prevent repackaging. Further packaging requirements give law enforcement clarity when they encounter marijuana in the field if it was purchased from legal dispensaries or black market sources. Especially in states now allowing, or considering, marijuana legalization this rule is critical. Total marijuana purchase limits per day and total quantity possessed will con-

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156. See Michael P. Tremoglie, *These Roadblocks are Killing Marijuana Advertising's Vibes*, BUS. INSIDER (Apr. 17, 2014, 10:00 AM), <http://www.businessinsider.com/roadblocks-to-marijuana-advertising-2014-4>.

157. *Id.* (internal quotation marks omitted) (quoting Steve Pasierb from Partnership for a Drug Free America).

158. See, e.g., OR. ADMIN. R. 845-025-8040 (2017).

159. See, e.g., Mitchell, *Smell of Weed*, *supra* note 129.

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tinue to apply.<sup>160</sup> Therefore clear packaging requirements will better serve law enforcement priorities.

Additionally, warnings should be tailored to match state requirements for signage at cannabis establishments. For example, in Washington state all retailers of recreational or medicinal marijuana must have, at a minimum, two posted signs.<sup>161</sup> Language from the consumption warning, posted below, could be included on each package to match state codes:

Warning:

- This product has intoxicating effects and may be habit forming.
- Smoking is hazardous to your health.
- There may be health risks associated with consumption of this product.
- Should not be used by women who are pregnant or breast feeding.
- Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug.<sup>162</sup>

States must additionally consider whether and how to limit product packaging designed to attract minors. Colorado bans advertising intended to attract minors<sup>163</sup> and requires edibles to be marked with “THC” to prevent confusion about which food products are safe for children.<sup>164</sup>

Article VI. Courier Licensing and Requirements

(1) Couriers may not use marijuana, alcohol, or become intoxicated during shifts delivering marijuana. Convictions for driving under the influence result in automatic forfeiture of Marijuana Courier License by drivers, and potential fines and liability for dispensaries.

(2) Couriers are only licensed to work within the jurisdiction of the licensing authority. Courier licenses do not extend to allow

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160. Kate McKee Simmons, *Colorado Proposal Would Allow Marijuana Delivery*, WESTWORD (Feb. 20, 2017, 5:48 AM), <http://www.westword.com/marijuana/colorado-proposal-would-allow-marijuana-delivery-8812287>.

161. WASH. ADMIN. CODE § 314-55-086 (2017).

162. *Id.* (consumption warning).

163. *State-by-State Guide to Marijuana Advertising*, LEAFLY, <https://www.leafly.com/news/industry/state-by-state-guide-to-cannabis-advertising-regulations> (last visited Feb. 2, 2018) (quoting Signage and Advertising: No Content That Targets Minors, COLO. CODE REGS. § 212-2.1112 (West 2017)).

164. David Zalubowski, *Colorado Gives Marijuana Edibles New Look to Avoid Confusion*, CBS NEWS (Sept. 30, 2016, 3:19 PM), <http://www.cbsnews.com/news/colorado-gives-marijuana-edibles-new-look-to-avoid-confusion/>.

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couriers to carry marijuana or cannabis products outside the licensing jurisdiction.

(3) Couriers are required to carry their Marijuana Employee Clearance License for Couriers at all times while operating as a courier.

(a) Couriers may not have any Controlled Substance or Motor Vehicle felony convictions that have not been fully discharged in the ten years immediately preceding the date of application. Except the State Licensing Authority may grant a license to a person if the person has a State felony conviction based on possession or use of marijuana or cannabis product that would not be a felony if the person were convicted of the offense on the date of application.

(b) Couriers may not have any other felony convictions that have not been fully discharged for five years prior to applying for your business license. Couriers may not have a criminal history that indicates that he or she is not of good moral character.

(c) Couriers may not be a licensed physician making patient recommendations, a sheriff, deputy sheriff, police officer, prosecuting officer, or be an employee of a local or State Licensing Authority or Board.

(4) Couriers are required to report to the Board any traffic accidents, citations, or criminal misdemeanor or felony offenses, whether pending or convicted, regardless of fault, regardless of whether infraction or crime occurred while operating as a courier.

(5) Couriers are required to submit to criminal and traffic background checks. Couriers must submit color photograph and will be fingerprinted at time of application for Marijuana Employee Clearance License. Couriers shall update their personal address and contact information with the Board.

(6) Couriers shall not carry more than \$500 worth of marijuana and cannabis product at any given time. Couriers shall not deliver more than \$300 worth of marijuana and cannabis product to any single purchaser.

(7) Couriers shall not carry firearms while operating as a marijuana courier.

Article VI is modeled heavily on existing requirements in Colorado to obtain a MED Occupational License.<sup>165</sup> Marijuana couriers should be subject to strict adherence to traffic codes, with additional requirements due to the increased risk of theft. Several provisions, including subsection (1) regarding

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165. See, e.g., *Business License Application Process—Medical Marijuana*, COLO. DEP'T OF REVENUE, <https://www.colorado.gov/pacific/enforcement/medical-marijuana-business-license-applicant> (last visited Feb. 2, 2018).

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on-the-job intoxication; subsection (6) addressing quantity of marijuana carried; and subsection (7) on firearms, are written with courier safety in mind. Because couriers are delivery persons who carry specialized product, their licenses as couriers should depend on clean traffic and felony criminal records. Their courier licenses should also be revocable, under subsection (4), for traffic accidents and criminal behavior.

Subsection (2) describes where couriers may travel with their Marijuana Employee Clearance License for Couriers while delivering cannabis products. Subsection (2) will vary widely depending on how the model act is implemented. In the state of Oregon, where individual cities may determine how to implement marijuana delivery, this resulted in a patchwork of local statutes.<sup>166</sup> Were the Model Legislation implemented across an entire state, subsection (2) could be amended to clarify that couriers may not leave state boundaries, but were it implemented on a city-by-city basis, as in Oregon, courier licenses should only be valid within their licensing jurisdiction.<sup>167</sup> For dispensaries, this means that businesses and drivers could be liable if the driver took a wrong turn and drove through a neighboring city street, where marijuana was not legal. For businesses operating on this micro-jurisdictional level, a truly great marijuana delivery app would offer routing for courier drivers that set directions programmed with the outside perimeter of their legal jurisdiction. The map would only guide drivers within legal city streets, without crossing the jurisdictional boundary.

Limiting the amount of marijuana related products carried by drivers will also vary by jurisdiction, under subsection (6). Portland allows drivers to carry up to \$3000.00 worth of cannabinoid products on routes, but each jurisdiction will need to balance this number.<sup>168</sup> Factors to consider include traffic (which may limit how many routes each driver could take in a day, as delivery may take longer in high traffic jurisdictions), crime statistics, and local limits on how much marijuana individuals may legally possess. These statutes could be extended further to include specific requirements for transportation security, the use of unmarked vehicles, and dispensary security. In Oregon, for example, statutes mandate non-residential locks, steel doors, back-up systems for all electronic records, and security procedures for video surveillance.<sup>169</sup> Each state could incorporate similar protocols for the protection of drivers.

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166. See Sophia June, *Weed Delivery Will Begin in Portland Any Day Now*, WILLETTE WKLY. (Feb. 7, 2017), <http://www.wweek.com/cannabis/2017/02/07/weed-delivery-will-begin-in-portland-any-day-now/> (describing the Portland City Council's one-off vote to add licensure requirements for retail delivery of marijuana).

167. See *id.*

168. *Pot Drivers Might Lose More Than Green*, *supra* note 148.

169. OR. ADMIN. R. 845-025-1410 (2017).

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**Article VII. Record Keeping**

(1) Records and files shall be retained at the licensed dispensary from which deliveries are made. Each delivery sales record shall include the following:

- (a) Name of the purchaser;
- (b) Name of the person who accepts delivery (record must reflect that (a) and (b) match);
- (c) Street addresses of the purchaser and the delivery location; and
- (d) Times and dates of purchase and delivery.

(2) Couriers must obtain the signature of the person who receives liquor upon delivery.

(3) Sales records must include the name of the delivery courier. Delivery courier must sign each delivery record as correct.

(4) Couriers must keep a log of all marijuana leaving the dispensary, documenting all marijuana on their persons when away from the dispensary. Couriers are responsible for tracking all marijuana leaving and returning to dispensaries.

(5) Couriers must cooperate with employees and investigators of the Marijuana Enforcement Division who are conducting inspections or investigations relevant to the enforcement of laws and regulations related to the Medical and Retail Codes. Couriers must allow inspection of products carried and records kept.

Article VII is based on similar requirements for liquor stores, which require liquor stores to verify age and identity.<sup>170</sup> But, unlike liquor stores, the statute requires businesses to keep records on clients, because, unlike liquor statutes, marijuana statutes regulate the maximum possession allowed by individuals, which requires dispensaries to share information on sales to prevent over-sales to individuals.<sup>171</sup> Marijuana retailers are required to participate in statutory schemes designed to limit how much marijuana any single individual can purchase in a day, to keep them under the per-day and total possession limits.<sup>172</sup> The provisions are designed to help facilitate accurate record keeping between the courier and dispensary location, as well as ensure that all products leaving with couriers make it to their intended destination.

The additional scrutiny on couriers, especially under Article VII subsection (4), is important to help prevent product from leaving dispensaries with light fingered employees. Retail employees cause more cash and product

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170. *See, e.g.*, WASH. ADMIN. CODE § 314-03-020 (2017) (consumer orders, Internet sales, and delivery for grocery stores and beer and wine specialty shops); MICH. ADMIN. CODE r. 436.1511 (2017) (open containers on licensed premises prohibited; consumption of liquor on licensed premises prohibited); MICH. ADMIN. CODE r. 436.1503 (2017) (hours and days of operation).

171. WASH. ADMIN. CODE § 314-03-020; MICH. ADMIN. CODE r. 436.1511.

172. *See Simmons, supra* note 156.

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shortage in the form of theft than shoplifters each year.<sup>173</sup> Requiring tracing of product, and careful logs, is intended to protect both employers and the public from product shortage.

Article VIII. Violations and Accountability

1. A licensee shall be accountable for all deliveries of marijuana made on its behalf. Dispensaries are liable for the performance and deliveries made by couriers in their employ.

2. The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or suspend or revoke a licensee's Marijuana Retail License, Marijuana Employee Clearance License, or Marijuana Employee Clearance License for Couriers, or any combination thereof, should a licensee violate any condition, requirement, or restriction.

Article VII serves the joint purposes of clarifying liability for failure to follow the law and addressing concerns of parents, worried their children could purchase marijuana via cellphone applications. The provision clarifies that employers are liable for the failure of employees to follow the law. Including a licensing penalty on dispensaries models penalties for liquor stores that sell to minors.<sup>174</sup> States could institute mirrored legislation for criminal penalties imposed on individual couriers who knowingly deliver marijuana to minors. For example, in Texas, "[a] person commits an offense if with criminal negligence he sells an alcoholic beverage to a minor."<sup>175</sup> Similar provisions could be established for sale to minors, intoxicated persons, or outside the jurisdiction.

## V. CONCLUSION

States continue to weigh the utility of marijuana delivery services. Colorado introduced a bill to the state legislature in February 2017 considering marijuana delivery.<sup>176</sup> California considered the legalization of marijuana delivery several years ago,<sup>177</sup> before ultimately foreclosing the possibility. Proponents of marijuana delivery services advocate that legalizing marijuana delivery will help the needs of the seriously ill patients using medicinal mari-

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173. Anne Fisher, *U.S. Retail Workers are Number 1 . . . In Retail Theft*, FORTUNE (Jan. 26, 2015), <http://fortune.com/2015/01/26/us-retail-worker-theft/>.

174. See Greene, *supra* note 55. But see Spencer, *supra* note 69.

175. TEX. ALCO. BEV. CODE ANN. § 106.03 (West 2009).

176. Simmons, *supra* note 156.

177. Dennis Romero, *Marijuana Delivery Services in L.A. Could Live or Die by New Laws*, LA WKLY. (Oct. 7, 2015, 7:03 AM), <http://www.laweekly.com/news/marijuana-delivery-services-in-la-could-live-or-die-by-new-laws-6131426>.

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juana,<sup>178</sup> reduce driving under the influence,<sup>179</sup> and help eliminate black market sales of marijuana.<sup>180</sup> The proposed Model Legislation is one more tool to ensure purchasers of marijuana are doing so safely and legally through authorized dispensaries.

States that fail to allow legal marijuana delivery services will not reap the full tax benefits of legalizing marijuana. Where marijuana is legal to possess, but difficult to obtain, users continue to rely on the corner drug dealer.<sup>181</sup> States can reduce demand for illicit marijuana and tax dispensaries and couriers by allowing legalization of delivery services for cannabis products. Delivery services are not uncontroversial but can be regulated to minimize drug-related crime, prevent marijuana users from driving under-the-influence, and keep marijuana out of the hands of minors. America's future is green, and marijuana users are tech savvy and demand the use of mobile apps. Implementing the Model Legislation, or similar statutes, would legalize the use of apps, allow for legitimate investments in the future of "Uber for weed" apps, and enable states to efficiently incorporate delivery services into existing legislation.<sup>182</sup>

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178. Jesse McKinley & Catherine Saint Louis, *In Expansion, New York's Medical Marijuana Program Will Offer Home Delivery*, N.Y. TIMES (Aug. 29, 2016), [https://www.nytimes.com/2016/08/30/nyregion/in-expansion-new-yorks-medical-marijuana-program-will-offer-home-delivery.html?\\_r=0](https://www.nytimes.com/2016/08/30/nyregion/in-expansion-new-yorks-medical-marijuana-program-will-offer-home-delivery.html?_r=0).

179. Noelle Crombie, *Legal Pot in Oregon: One Year Later*, OREGONIAN: OREGON-LIVE, [http://www.oregonlive.com/marijuana/index.ssf/2016/06/oregon\\_marks\\_1\\_year\\_anniversar.html](http://www.oregonlive.com/marijuana/index.ssf/2016/06/oregon_marks_1_year_anniversar.html) (last updated Feb. 23, 2017, 3:53 PM) (noting increase in drivers stopped by police for driving under influence of marijuana).

180. Andrea Flores, *Proposed Marijuana Home Delivery Bill Has Its Pros & Cons*, CBS DENVER (Feb. 22, 2017, 9:01 PM), <http://denver.cbslocal.com/2017/02/22/marijuana-home-delivery-bill-colorado-denver/>.

181. Tracey Lindeman, *Will Marijuana Legalization Push the Pusher out of Business?*, GLOBE & MAIL (Feb. 16, 2016, 5:00 AM), <http://www.theglobeandmail.com/report-on-business/small-business/sb-managing/will-marijuana-legalization-push-the-pusher-out-of-business/article28713086/> (one Canadian drug dealer noted, "If the store's not open at 10 p.m., they're going to come see people like us [drug dealers]" when asked about the effect of legalizing marijuana).

182. Lewis, *supra* note 1.