



January 28, 2015

Regarding: SB 30
Position: Oppose Unless Amended

Alaska Senate Judiciary/Alaska House Judiciary Committee
Attention Senator Lesil McGuire, Chair and Representative Gabrielle Ledoux, Chair
Pouch V
State Capitol
Juneau, Alaska 99801

Cc: Committee members

Dear Chairs McGuire and Ledoux and members of the committee:

With help from thousands of supporters, the Campaign to Regulate Marijuana Like Alcohol in Alaska led the campaign for Ballot Measure 2, which was approved by 53% of Alaska voters on November 3. This measure removes any ambiguity about the legality of adults 21 and older possessing and securely cultivating limited amounts of marijuana. It will also replace the underground, unregulated market for marijuana with a regulated system of taxpaying businesses.

Under Alaska law, for the next two years, the Legislature's ability to modify the initiative is restricted. We recognize that some changes to the criminal code may be desirable to harmonize it with Measure 2. And we understand that SB 30 is a working draft. But we are very concerned that, in its current form, SB 30 would remove fundamental protections from the voter-enacted law. Our comments are directed only at the content of the bill in its current form and not at the intent of the drafters. We understand the committee is open to changes to ensure the voters' will is effectuated, and we appreciate the opportunity to voice our concerns and suggestions.

I have outlined our specific concerns about SB 30 below. This version has a few revisions to the testimony I submitted earlier this week. The most substantive changes are on number 8.

The work before you is important and we thank you for it. Seventy percent of your colleagues in the Senate have come to Juneau from districts that voted yes on Ballot Measure 2. Your constituents are looking to you to successfully implement the initiative, and we hope to help you do so. We will be providing legal and policy expertise to state and local lawmakers, and representing the intent of the initiative when questions arise.

Sincerely,

Dr. Timothy Hinterberger
Chair, Campaign to Regulate Marijuana Like Alcohol in Alaska

Specific Concerns With the Current Version of SB 30

1. **In its current form, SB 30 would repeal Measure 2’s comprehensive legal protections and replace them with a mere defense.** (Sec. 5 and Sec. 13)

Measure 2 makes it lawful under Alaska state law and the laws of all of its political subdivisions for adults 21 and older to possess, give away to other adults, and cultivate marijuana for personal use, and for registered marijuana establishments and their staff to engage in the activity necessary to produce and sell marijuana to adults. It explicitly provides that such activity is not a civil or criminal offense, nor may it be a basis for seizure or asset forfeiture. Section 13 would strip these comprehensive legal protections and Section 5 would replace them with a mere defense.

In its current form, the bill would eviscerate the initiative. Voters opted to make this conduct lawful, not just to create a defense to prosecution, which would allow for a person to be arrested, hauled into court, and forced to prove the defense. This would waste police and judicial resources and would thwart the purpose of the law. It is vital to the intent and workability of the law that adults and marijuana establishments have all of the protections listed in Measure 2 — that their conduct be explicitly lawful, that they be afforded protections from seizure and asset forfeiture, that they be protected from both municipal and state penalties, and that the protections apply to both civil and criminal penalties.

In addition to removing important legal protections and replacing them with defenses, SB 30 would reduce the amount of marijuana adults could possess from all of the marijuana produced from their six plants to a mere ounce. (Sec: 17.38.020 (b))

It is essential that 17.38.020 and 17.38.070 remain on the books, as approved by the voters of Alaska. However, additional revisions can and probably should be made to harmonize the criminal code with those protections. For example, each criminal statute for crimes involving marijuana and hashish could be amended to begin:

“Except as authorized **or exempted from criminal penalties by AS 17.30 or AS 17.38,**”

2. **In its current form, SB 30 creates a civil violation for adults who are 21 and older who merely display, but do not use, marijuana.** (Sec. 4, 11.71.065)

The initiative prohibits public consumption while explicitly allowing display by individual adults. (17.38.020 (a), (d)) Adults over 21 should not be criminalized merely for the act of making publicly visible their legal marijuana or marijuana products. To align with the intent of Measure 2, this section should be amended to penalize only the public consumption of marijuana, not the display.

3. **In its current form, SB 30 makes it:**
 - a. **a class C felony to manufacture or deliver preparations containing marijuana, including edible products, with an aggregate weight of more than an ounce;** (Sec. 1, AS 11.71.040(a))

- b. **a class A misdemeanor to manufacture or deliver preparations containing marijuana, including edible products, with an aggregate weight of one ounce or less;** (Sec. 1, AS 11.71.050(a))
- c. **a class A misdemeanor to possess preparations containing marijuana, including edible products, with an aggregate weight of more than an ounce but less than four ounces;** (Sec. 1, AS 11.71.050(a))
- d. **a class B misdemeanor to possess preparations containing marijuana, including edible products, with an aggregate weight of one ounce or less.** (Sec. 3)

First, an exception must be made for marijuana establishments.

Second, as these provisions apply to individuals, such behavior by adults over 21 should not be a crime as long as it is in compliance with Measure 2. Under the initiative, adults who are at least 21 may legally possess and give away up to an ounce of marijuana outside of their home. As was noted, at the premises where they cultivate up to six marijuana plants, they may possess all of the cannabis produced by their plants — there is no limit on the quantity, not a one-ounce limit and not a four-ounce limit.

Third, many preparations containing marijuana, such as baked goods, can easily weigh more than an ounce while containing well under an ounce of marijuana itself. This is due to the weight of heavier, non-marijuana ingredients such as sugar and flour. The weight of such ingredients may not be counted toward the weight of marijuana under Measure 2. (17.38.900 (6)) This creates a prejudice against consumers who prefer to eat, rather than smoke, marijuana — particularly those who prefer to create their own marijuana-infused products in such safe and traditional methods as baking.

Furthermore, we recommend that even prosecutions of persons under 21 should not take into account the aggregate weight of the product. As stated above, the aggregate weight can often include baking ingredients, which make the final product much heavier than an ounce, if the marijuana-infused product is an edible. This is not a reflection of the potency of the product, and is not akin to possessing even an ounce of marijuana.

Finally, as was noted, adults are allowed to possess *all* of the marijuana produced by their six plants, not just one ounce. (17.38.020 (b)) They may also bake them into baked goods and other products at home.

4. **In its current form, SB 30 makes it a class A misdemeanor to manufacture a schedule VIA controlled substance through solvent-based extraction other than vegetable glycerin, with no exception for regulated product manufacturers/processors.** (Sec. 1, AS 11.71.050(a))

In its current form, this provision would criminalize such manufacture even by registered product manufacturers abiding by safety regulations, which would go against the intent of the initiative. We would not object, however, to imposing a ban on the home production of hash (17.38.020 (b)) products using methods that can be dangerous when conducted at a residence by a novice. An exception in such cases should still be made for safer

methods, such as vegetable glycerin-based extraction. In addition, a similar exception should be explicitly made for water-based extractions.

One option would be amending this section to end “ or (11) manufactures a schedule VIA controlled substance through a solvent-based extraction method using a substance other than **water or** vegetable glycerin, unless the person is **a marijuana products manufacturer or is acting in his or her capacity as an owner, employee or agent of marijuana products manufacturer.**”

5. **In its current form, SB 30 makes it a class B misdemeanor for “uses and displays” of marijuana “not proscribed under AS 11.71.065.”** (Sec. 3)

This appears to apply to display of products by a retailer or display of more than an ounce by a minor, but it’s not clear what else it might encompass. The campaign strongly recommends that this be stricken. The regulatory authority is better suited to handle any violation of rules for display by a retailer — and display shouldn’t be prohibited as long as it’s not visible from outside the store. For minors, they could simply be charged with possessing over an ounce if marijuana is displayed. The provision, as written, is too ambiguous.

6. **Under the current draft of SB 30, it would remain a class C felony to possess marijuana with “with reckless disregard” within 500 feet of schools, recreational or youth centers, and on a school bus.** (Sec. 1)

This section must be removed or an exception for Measure 2 must be included (not just a defense). People traveling to and from their homes may pass within 500 feet of those locations with no intention of even approaching minors. Those residents should not be targeted, and their individual rights limited, for behavior they are responsibly undertaking in the privacy of their own homes. There is no similar law prohibiting possession of alcohol within that distance.

7. **In its current form, SB 30 does not make any exceptions allowing for individuals under 21 on the premises of a licensee.** (Sec. 4, 11.71.067)

An exception should be made for individuals not in the direct employ of a marijuana establishment but whose occupations bring them onto the premises. For example, emergency first responders, building contractors or maintenance personnel, members of the press, and even elected officials may be under 21. They shouldn’t be prohibited from doing their jobs on the premises of a licensed marijuana establishment due to their age if they don’t handle marijuana and are not involved in any way with its production, processing or sale.

8. **In its current form, SB 30 re-schedules hashish, hash oil, and hashish oil to a Schedule VIA controlled substance, but lists them as substances that are separate from marijuana.**

Treating hashish, hash oil, and hashish oil in the same manner as marijuana is consistent with the intent of Measure 2, and we agree with the attempt to harmonize the two.

Nonetheless, the way SB 30 has done so is likely to cause confusion. Currently, SB 30 provides: “Marijuana, hashish, and hash oil or hashish oil are schedule VIA controlled substances.” However, hash is a concentrate of marijuana, and is therefore included in the definition of marijuana both in Measure 2 itself and the revised definition of marijuana under SB 30. (AS 11.71.900 (14)). There should not be a separate enumeration of hash or hash oil under Schedule VIA.

9. **In its current form, SB 30 criminalizes driving with a marijuana accessory or marijuana in one’s vehicle if there is evidence it has been consumed in the vehicle, and it fails to include two of the exceptions that apply to alcohol.** (Sec. 12(e))

In contrast to alcohol, cannabis is a medicine for many people. As drafted, SB 30 prohibits a patient from using cannabis even in a parked vehicle in which she was previously a passenger, where the driver is not present. We can imagine, for example, a seizure patient requiring a sublingual dose of cannabis oil. Given that many places will prohibit cannabis use, this may pose an extreme and unnecessary hardship.

Furthermore, SB 30 omits two important exceptions that apply to alcohol. For alcohol — but not marijuana — an open container may be possessed on the other side of a partition from the driver (such as in a cab with a partition or a limo), and when the person is a passenger on transportation designed for 12 or more people (such as a shuttle or a bus). These exceptions should also be made for marijuana, which could be consumed in many forms, including non-smoked forms.