

be removed — or an exception must be added for instances where the marijuana was produced by the person’s plants — for the bill to pass legal muster.

4. SB 30, Draft X limits the amount that retailers can sell per day to adults, thus illegally requiring intrusive recordkeeping. (Sec. 24)

To protect personal privacy, a right enshrined in the Alaska Constitution, Measure 2 prohibits regulations requiring retailers to collect and record personal information about their consumers. (17.38.090. (b)) This requirement entails a violation of that important protection by requiring retailers to sell only five grams of marijuana concentrates to an adult per day. This could only be done by keeping track of how much each consumer buys. This is illegal and especially worrisome in an age when so many records have been hacked. An alternative approach would be to limit the amount of marijuana concentrate sold per transaction, which does not require tracking.

5. SB 30, Draft X defines “open marijuana container” too broadly. (Sec. 31)

This bill draft correctly treats open marijuana containers similarly to open beverage containers, with similar exception for passengers behind a partition and passengers in a vehicle with a capacity of 12 or more persons. However, it includes marijuana accessories in the definition of “open marijuana container.” This would criminalize the possession of a pipe with any amount of residue in it, even if it has not been recently used. Accessories such as pipes cannot be “closed,” so even a pipe at the bottom of someone’s bag in the back seat would violate the open container laws. This is overbroad and does not serve a legitimate public health or safety concern. The phrase “or marijuana accessory” should be stricken from this definition.

Additionally, the Judiciary Committee’s proposed definition, which includes a standard that “there is evidence that marijuana has been consumed in the motor vehicle,” is preferred.

6. SB 30, Draft X classifies certain criminal activities involving the possession, manufacture, and delivery of preparations containing marijuana based on “aggregate weight,” which impermissibly includes the weight of other ingredients combined with marijuana (Sec. 3-10)

This bill draft wisely creates exceptions for registered marijuana establishments and individuals acting in compliance with AS 17.38.020 of Measure 2, which includes being allowed to possess all of the marijuana produced by persona plants on the premises where the marijuana was produced. As discussed above, this bill also unconstitutionally limits such possession to 16 ounces. However, assuming that AS 17.38.020 remains intact, as approved by voters, we appreciate the explicit inclusion of these exceptions.

Nevertheless, 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.

Specific Concerns With the Current Version of SB 30

1. SB 30, Draft X places marijuana back into the state Controlled Substances Act.

By supporting Measure 2, the voters of Alaska clearly expressed their desire that marijuana be treated similarly to alcohol. The Senate Judiciary Committee understood that was the intent of the initiative, and in their wisdom, removed marijuana from the Controlled Substances Act. This bill draft should not attempt to undo that important decision.

2. SB 30, Draft X deletes important introductory language to each provision for protections for lawful marijuana businesses and their staff. (Sec. 18-23)

Each of the protections for lawful personal possession of marijuana and the regulation of marijuana establishments and their staff begins, “[NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE].” (AS 17.38.020, 17.38.070) The redraft would delete this important phrase, which is intended to ensure that any provision of law that was inadvertently not modified — or that is enacted in the future — is trumped by this legal protection. This is especially important if marijuana remains in the Controlled Substances Act.

Any number of criminal statutes that should not apply to marijuana under Measure 2 may include a reference to a controlled substance, which would still include marijuana. In addition, the “notwithstanding” clause would determine that Measure 2 takes precedence over not only state criminal statutes, but also state civil laws and local ordinances. Neither the Campaign to Regulate Marijuana Like Alcohol nor the legislature and its staff can be absolutely certain that each and every law that could be interpreted in a way that is contrary to Measure 2 is being amended.

Indeed, early drafts of SB 30 removed or severely limited legal protections for behavior that was legalized under Measure 2 — such as striking legal protections and replacing them with a mere defense; prohibiting the mere display of permissible amounts of marijuana in public; prohibiting the use of permissible amounts of marijuana in public view; and reducing the amount of marijuana that adults could possess on the premises where their personal plants were grown. Indeed, this bill draft contains provisions that would do just that. This illustrates the very real odds that not all statutes inconsistent with Measure 2 will be immediately identified and amended to be consistent with the initiative.

While the rest of the language of 17.38.020 and 17.38.070 should be strong enough to trump contradictory legislation even without the “notwithstanding” phrase, the added phrase reinforces that those protections are paramount — unless they are amended to create an exception (in a constitutional manner or after two years).

3. SB 30, Draft X impermissibly limits possession of marijuana produced by personal plants on the premises where the plants were grown. (Sec. 18)

The ballot initiative is clear that it is lawful for an adult 21 years of age or older to possess up to six marijuana plants and all of the marijuana produced by those plants on the premises where the plants are grown. Limiting such possession to 16 ounces is a direct, unconstitutional violation of the initiative. The phrase “or the possession of 16 ounces or more of marijuana at any time” must



March 11, 2015

Regarding:	SB 30
Position:	Oppose Unless Amended

Alaska Senate Finance Committee
Attention Senator Pete Kelly and Senator Anna MacKinnon, Co-Chairs
Pouch V
State Capitol
Juneau, Alaska 99801

Cc: Committee members

Dear Chairs Kelly and MacKinnon 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 percent 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, the legislature's ability to modify the initiative is restricted for the next two years. It is our hope that the legislature will respect the will of voters not just for the next two years, but also for the long haul.

We recognize that some changes to the criminal code may be desirable to harmonize it with Measure 2. Your colleagues in the Senate Judiciary Committee carefully debated the merits of this bill for nearly a month before giving it their approval. In their wisdom, they saw fit to remove marijuana from the Controlled Substances Act, which would align the bill more closely with the intent of the voters that marijuana be regulated similarly to alcohol. We are concerned that this committee's substitute would undo much of that diligent work. In addition, several provisions clearly violate the voter-approved initiative. Our initial concerns about SB 30 are outlined below. However, we may identify additional issues as our analysis of the bill continues.

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 will represent the intent of the initiative when questions arise.

Sincerely,

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

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