



February 5, 2015

**Regarding: Draft Revisions  
to HB 79**  
**Position: Oppose Unless  
Amended**

Dear Mr. Brown:

We appreciate the opportunity to review the early redraft of HB 79.

The draft revision that became available for our review on February 4 takes a substantially improved approach compared to the earlier version. Rather than merely creating a defense against state criminal charges, the revision would exempt most of the conduct allowed by Measure 2 from Alaska criminal statutes.

While this draft is far better overall, it still includes provisions we view as not conforming to the will of voters. Our concerns and suggestions are detailed in the following pages. Perhaps the most concerning elements of the redraft are:

- Deletion of the initiative's comprehensive legal protections for adults. Measure 2's AS 17.38.020 makes marijuana-related conduct lawful; it protects adults from not only state charges but also municipal offenses; and it prevents seizures and property forfeitures. In contrast, the redraft would merely remove state crimes.
- Criminalizing conduct allowed by Measure 2, including lowering to one ounce the amount of marijuana adults can lawfully possess in the location where they cultivate plants.
- Unnecessary restrictions on the safe production of extracts for making edibles.

Thank you again for the opportunity to comment. Please let us know if you have any questions.

Sincerely,

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

Karen O'Keefe  
Director of State Policies  
Marijuana Policy Project

## Specific Concerns With the Draft Redraft of HB 79

1. **As was the case with the original version of HB 79, the proposed redraft would repeal Measure 2's comprehensive legal protections for adults and replace them with inadequate protections.** (Sec. 86)

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. (AS 17.38.020) It also explicitly provides that that conduct may not be a basis for seizure or asset forfeiture. HB 79's Section 86 would repeal these comprehensive legal protections. While the redraft removes criminal penalties for *most* (but not all) of the conduct allowed by Measure 2, doing so is not nearly as comprehensive as the protections provided in AS 17.38.020.

It is essential that AS 17.38.020 remain on the books to make sure that adults' personal use activities related to marijuana are not subject to penalties under local ordinances and to protect them from seizure and forfeiture. It is also crucial that these activities be explicitly "lawful" under state law. Any number of state and municipal statutes may refer to "illicit" or "illegal" activity. AS 17.38.020 makes it clear that the marijuana-related activity covered by that section is indeed lawful under state law, notwithstanding federal law.

2. **As was the case with the original version of HB 79, the proposed redraft would criminalize conduct Measure 2 makes legal, including by reducing the amount of marijuana adults could possess.**

The current version of HB 79 deletes marijuana and hash from controlled substances and creates a new crime for marijuana offenses: AS 17.38.200. This is generally a very sensible approach. However, the specifics of what is criminalized are unacceptable. The current draft of HB 79 dramatically restricts adults' freedoms relating to marijuana by criminalizing conduct that voters made lawful.

- Measure 2's AS 17.38.020 (b) provides that adults aged 21 and older may grow six plants (three of which may be mature) and possess all of the marijuana produced from those plants on those premises. AS 17.38.200 (a)(1) and (2) reduces the amount they can possess or manufacture by criminalizing "one or more preparations, compounds, mixtures, or substances of an aggregate weight of more than one ounce containing marijuana." While AS 17.38.200's language is somewhat ambiguous, it also appears to conflict with the provisions of Measure 2 that allow possession of up to an ounce at locations other than the personal cultivation location, excluding the weight of non-marijuana ingredients. AS 17.38.200 (a)(1) and (2) appear to include the non-marijuana ingredients when calculating the weight.
- The redraft would delete Measure 2's criminal penalties for cultivating marijuana where it is visible to the public, where it is not secured, or without the consent of a

property owner. (AS 17.38.030) Instead, it would criminalize mere possession or display (in addition to cultivating) in any of these types of locations. (AS 17.38.220 (a)(1)) Measure 2 specifies that a private property owner may prohibit marijuana, but that is very different from requiring an adult to get a property owner's affirmative consent prior to entering their restaurant, private parking lot, home, or car with a small amount of marijuana on his or her person. In addition, creating a new crime for doing so is inappropriate and not on par with how alcohol is treated.

- The redraft, like the original HB 79, conflicts with Measure 2 by penalizing mere display of marijuana by those over 21. (AS 17.38.230)

3. **A significant improvement over the original version of HB 79, the proposed redraft would still prohibit certain safe methods of extraction by adults.** (AS 17.38.200(a)(4))

We do not object to imposing a ban on the home production of extracts using methods that can be dangerous when conducted at a residence. However, an exception also needs to be made for water-based extractions, which cannot cause explosions. Extractions are important to patients who use non-smoked methods of administration.

4. **As was the case with the original version of HB 79, the proposed redraft would not make any exceptions allowing for individuals under 21 on the premises of a licensee.** (AS 17.38.200(a)(5))

Three types of exceptions should be included:

- for individuals who are not employed by the marijuana business and do not work directly with marijuana, but who have legitimate work at the establishment, such as EMTs, regulatory staff, maintenance personnel, elected officials, and members of the media. Notably, there are several far broader exceptions to a similar statute for persons under 21 who enter the premises of an establishment selling alcohol. (AS 04.16.049)
- for registered medical marijuana patients under the age of 21, who currently have no safe way to obtain the medicine Alaska voters have allowed them to use since 1998.
- to include a defense for retailers who have a good faith belief that a customer is 21 and older — based on the presentation of an ID card that appears to both be valid and to be the person who presents it — as is the case for alcohol sales. (AS 04.21.050)

5. **As was the case with the original version of HB 79, the proposed redraft would criminalize driving with a marijuana accessory or a container of marijuana in one's vehicle if there is evidence it has been consumed in the vehicle.** (AS 28.35.029(a))

Measure 2 explicitly makes transportation of marijuana by adults 21 and older lawful. (AS 17.38.020 (a), which the redraft would repeal.) The redraft — and the original version of HB 79 — includes an unnecessary restriction on “open containers” that appears to run counter to Measure 2 and which would be particularly onerous on patients. Private establishments, including nursing homes, may restrict their residents from using

marijuana.<sup>1</sup> A parked vehicle may be the only place where a patient is able to administer their medicine (sublingually, by consuming edibles, by vaporization, or otherwise).

To address concerns about driving under the influence, which of course remains illegal, we would not object to penalizing smoking or vaporizing marijuana in a moving vehicle.

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<sup>1</sup> See: “Medical Marijuana Not Allowed at Nursing Home” <http://www.elderlawanswers.com/medical-marijuana-not-allowed-at-nursing-home-4954>