February 12, 2015

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

Regarding: **Draft Revisions to SB 30/HB 79**
Position: **Oppose Unless Amended**

Dear Chairs McGuire and LeDoux and members of the committee:

We appreciate legislators' and legislative staff's diligent work to revise SB 30/HB 79. In particular, we are pleased that the bill no longer creates mere defenses for actions that are lawful under Measure 2, and instead removes marijuana from the Alaska Controlled Substances Act.

The revised draft is represents a substantial improvement upon previous drafts. However, many of the issues we have raised with previous versions of this bill remain. Our concerns and suggestions are detailed in the following pages. Perhaps the most serious of them are that the redraft violates the will of voters in the following crucial ways. It:

- Deletes 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.

- Criminalizes conduct allowed by Measure 2, including by reducing to one ounce the amount of marijuana adults can lawfully possess in the location where they cultivated the plants.

- Deletes language — "notwithstanding any other provision of law …" — that was included to ensure that legal protections for marijuana establishments and their staff trump any contradictory statutes.

We strongly urge that substantial additional revisions be made to the draft. 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

Rachelle Yeung, Esq.
Legislative Analyst
Marijuana Policy Project

Specific Concerns With the Draft Redraft of SB 30/HB 79

1. **The proposed redraft deletes important introductory language to each provision for protections for lawful marijuana businesses and their staff.** (Sec. 45-49)

   Each of the protections for lawful marijuana establishments and their staff begins, "[NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE]." (AS 17.38.070) The redraft would delete this crucial phrase, which would 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 includes not only the state's criminal laws related to marijuana (which the legislature is wisely looking at amending), 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/HB 79 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. The campaign understands that some of these concerns are being addressed in new drafts of the bill. However, this illustrates the realistic odds that not all statutes inconsistent with Measure 2 will be immediately identified and amended to be consistent with the initiative.

2. **As was the case with the original version of SB 30/HB 79, the proposed redraft would repeal Measure 2's comprehensive legal protections for adults and replace them with inadequate protections.** (Sec. 160)

   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 produce 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. SB 30's Section 160 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 by in AS 17.38.020.

   If SB 30 repeals AS 17.38.020, we are concerned cities and villages could criminalize, arrest, and prosecute adults for possessing marijuana. At least one city, Wasilla, is considering an ordinance that would criminalize conduct AS 17.38.020 protects, including by prohibiting the cooking of edibles even at home and possession of more than two ounces at a single home.

It is essential that AS 17.38.020 remain on the books so that adults' personal use activities related to marijuana are not subject to arrest, forfeiture, or penalties under local ordinances. 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 marijuana-related activity covered by that section is indeed lawful under state law, notwithstanding federal law.

3. **As was the case with the original version of SB 30/HB 79, the proposed redraft would criminalize conduct Measure 2 makes legal, including by reducing the amount of marijuana adults could possess. (Sec. 50)**

   While the current draft of HB 79 no longer includes as many provisions that would violate Measure 2, certain provisions remain that would dramatically restricts adults' freedoms relating to marijuana by criminalizing conduct 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, which may exceed one ounce.

   Nevertheless, SB 30/HB 79 criminalizes possession of more than an ounce, making possession of more than an ounce but less than four ounces a violation (17.38.220(a)(4)) and possession of more than four ounces a misdemeanor (AS 17.38.200 (a)(1)), regardless of whether it was produced by an individual's personal plants. Ideally, this bill would not repeal Measure 2's AS 17.38.020 so that the specific protections approved by the voters remain intact. At the very least, an exception should be made for the possession of marijuana in excess of an ounce produced by the personal plants on the premises where the plants were grown.

   Furthermore, Measure 2's AS 17.38.020(b) ensures that adults can possess six whole plants, regardless of the aggregate weight of the plants. This legal protection is entirely separate from the one ounce of marijuana that adults may use and display. Section 17.38.260 of SB 30 ("Aggregate weight of live marijuana plants") must not artificially reduce that limit. This section appears to be an attempt to fit the six permissible personal plants into the one-ounce limit of AS 17.38.020(a). These two separate sections, with separate protections, must not be conflated. Again, we strongly urge the Legislature to not repeal AS 17.38.020.

4. **As was the case with the original version of SB 30/HB 79, the proposed redraft takes into account the weight of non-marijuana ingredients.** (Sec. 50)

   The current draft of SB 30 continues to include the weight of non-marijuana ingredients in criminal statutes involving any preparations, compounds, mixtures, or substances containing marijuana. This explicitly contradicts Measure 2, which allows the possession of one ounce of marijuana (or more, if it's at the location where one's personal plants are grown) and which defines marijuana to exclude "the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products." Section 17.38.200(a)(2) of the bill criminalizes the manufacture or delivery of such preparations over an ounce.

However, such preparations weighing more than an ounce are often unlikely to contain a whole ounce of marijuana.

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, and is not an accurate reflection of the potency of the product. This creates a prejudice against consumers (often patients) 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.

5. **The current draft of SB 30/HB 79 does not allow for safe, solvent-based extractions involving water.** (Sec. 50)

   We applaud the committees for amending this bill to allow registered establishments to produce marijuana extracts. However, an additional exception should be made under Sec. 17.38.200(a)(4) for non-registered individuals to safely produce marijuana concentrates through the use of solvent-based extraction methods involving water. This section can easily be amended by adding "or water" after "vegetable glycerin."

6. **The current draft of SB 30/HB 79 sets the penalty for certain violations by minors higher than is permitted under Measure 2.** (Sec. 50)

   Under the current draft of the bill, AS 17.38.220(a)(2) rightfully punishes persons under 21 years of age for misrepresenting their age to a marijuana establishment in an attempt to obtain marijuana, marijuana products, or marijuana accessories. SB 30 deems such behavior "a violation" and "punishable as provided in AS 12.55." Accordingly, AS 12.55.036 provides for a fine of "no more than $500 for a violation." Sec. 17.38.050 of Measure 2 addresses this same criminal behavior. However, it sets a limit for a fine of "up to $400." Please ensure that the penalties under AS 17.38.220(a)(2) comply with Measure 2.

7. **SB 30/HB 79 continues to refer to soon-to-be no longer existent controlled substances statutes.**

   Under the current draft of SB 30, AS 11.71.040(a)(2) continues to criminalize the manufacture or delivery of "one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more containing a schedule VIA controlled substance," and AS 11.71.040(a)(3)(F) criminalizes the possession of four ounces or more of such. (Sec. 18) This is confusing because schedule VIA of the Controlled Substances Act is repealed by Section 160 of this very bill. Any reference to 11.71.060 is also confusing for this reason since it pertains to penalties for a violation relating to a schedule VIA controlled substance, which will no longer exist. (Sec. 22, 29)

8. **SB 30/HB 79 should make further exceptions to allow individuals under 21 on the premises of a licensee.** (Sec. 50)

We applaud the bill sponsors for allowing adults to deliver marijuana to registered patients under 21 (AS 17.38.200(a)(3)) and for making an exception for minors to enter a marijuana establishment at the request of a peace officer (AS 17.38.220(b)). However, further exceptions should be made for individuals who are not employed by the marijuana business and do not work directly with marijuana, but have legitimate work reasons for entering the premises. Such an exception should be made for EMTs, police officers, 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 under AS 04.16.049.

9. **Under the current draft of SB 30/HB 79, the proposed definition of "marijuana concentrates" does not encompass all potential concentrates.** (Sec. 52)

   Marijuana concentrates can be produced from the resins of the marijuana plant and through methods other than extraction. We suggest:

   15) "marijuana concentrate" means a product created from the resins of or by extracting cannabinoids from any part of the plant (genus) Cannabis.