



March 5, 2015

Dear Chairman Stoltze:

We appreciate legislators' and staffs' diligent work to craft a regulatory bill to supplement Ballot Measure 2, and were pleased to see that SB 62 already incorporated some of our previous input. We also support the new inclusion of registrations for home growers, boutique producers, and marijuana brokers.

SB 62 represents a substantial improvement upon the previous draft. However, we continue to have several concerns, which are detailed below. The most serious of the concerns are:

- The deletion of 17.38.070's comprehensive legal protections;
- Limiting the amount that can be sold per day, thus illegally requiring intrusive recordkeeping;
- Increasing the total maximum application fees to beyond \$5,000; and
- The breadth of the circumstances when the board would be required to revoke or suspend a registration.

Sincerely,

Dr. Tim Hinterberger
Chair, Campaign to Regulate Marijuana Like Alcohol

Concerning Provisions of SB 62

- Deletes the “notwithstanding” phrase in the paraphernalia protections provisions. (Sec. 2, AS 17.38.060)
- Uses broad language on banning advertising and packaging that may be enticing to minors. (Sec 3, AS 17.38.075, AS 17.38.090 (c)(2))

The bill would prohibit advertising or marketing “marijuana, a marijuana product, or a marijuana accessory in a manner enticing to minors.” We enthusiastically support reasonable restrictions on advertising and efforts to prevent advertising from *targeting* minors, but we are concerned this may be vague and overbroad. Any advertising — even a yellow pages listing — could arguably be considered enticing to a minor who wants to use marijuana. More precise guidance and prohibitions would be more appropriate.

- Changes “registration” to “license.” (throughout)

The word “registration” was carefully chosen in light of court decisions on federal preemption (i.e., *Emerald Steel v. BOLI*, Oregon Supreme Court). “License” suggests affirmative authorization rather than a designation that one is exempt from state penalties. While we believe that even laws using “license” are not preempted, the language should be left as-is to keep the law on the strongest possible footing.

- Increases the total application fees beyond the \$5,000 cap. (Sec. 4, 17.38.090(a)(2), Sec. 15, 17.38.110(e))

As enacted, Ballot Measure 2’s AS 17.38.090 caps application fees at \$5,000 — half of which goes to the municipality and half of which goes to the state. In contrast, Sec. 4 would allow the state alone to charge up to \$5,000, in addition to a registration fee that covers the locality’s costs. This conflicts with the voter-enacted law and could make it very difficult for small farmers and other mom and pop-type businesses to qualify.

- Requires, rather than allows, a municipality to establish local licensing fees. (Sec. 15, 17.38.110(e))

Establishing licensing fees should be optional for municipalities. Some localities may prefer all licensing be handled at the state level.

- Limits the amount that retailers can sell per day to adults, thus illegally requiring intrusive recordkeeping. (Sec. 22, 17.38.230(a))

To protect personal privacy, a right enshrined in the Alaska Constitution, Measure 2 prohibits regulations from 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 one ounce of marijuana to an adult. This could only be done by keeping track of how much which consumer buys. This is illegal and especially worrisome

in a day in age when so many records have been hacked. This is also unnecessary: It would be a crime for the person to possess more than an ounce of marijuana the individual did not produce him or herself.

- Requires retailers to be closed from midnight until 8:00 a.m. (Sec. 22, 17.38.230(c)(1))

In a state where bars don't have to close until 5:00 a.m. under state law, it's puzzling why adults would have a midnight curfew on buying marijuana from a regulated business. Hours of operations are best left to regulators and/or localities.

- Forbids retailers from selling to other licensees. (Sec. 22, 17.38.230(c)(4))

Retailers may go out of business or find that a certain product doesn't sell in their market. They shouldn't be prohibited from selling their excess inventory to other retailers.

- A marijuana processor cannot sell to a marijuana broker, but a broker may buy marijuana from a processor. (Sec. 22, 17.38.220, 17.38.260)

Marijuana processors may only sell marijuana to a marijuana retailer or another processor. Yet a marijuana broker may purchase from a processor. This contradiction is presumably a typo.

- The community notice requirements are excessive for growers, particularly home growers. (Sec. 22, 17.38.340)

Each application and transfer would have to be posted at the proposed location. This is unnecessary and could put small-scale growers at risk of theft. In addition, a hearing would have to be held for each application within a half mile of a community council, with notice given to the council and any nonprofit community organization. This seems excessive, especially for home growers and boutique growers.

- The board may require three weeks of paid notices in newspapers of applications. (Sec. 22, 17.38.340)

This could be extremely costly and could make it impossible for small growers to participate. It also may not be desirable to have the locations that public, especially for growers and producers.

- The board "shall suspend or revoke" a license if it finds the continued sale or manufacture of marijuana by the licensee would be contrary to "the best interests of the public." (Sec. 22, 17.38.390(2))

This vague and overbroad language could allow a board that simply disagrees with voters' decision to make marijuana cultivation legal to revoke licenses. Licensees need notice of the rules and what is not permitted, and should not be subject to the personal judgment of the board, which may vary based on personality. This sentence should be stricken.

- The board "shall suspend or revoke" a license if it finds the licensee has failed to correct a defect that is a violation of an "other applicable law." (Sec. 22, 17.38.390(3))

Given that marijuana cultivation and sales violate federal law, this should be revised to clearly only apply to state law.

- In several cases, a suspension or revocation of a registration should be allowed — not required — by the board. (Sec. 22, 17.38.390)

The bill provides that the board **must** suspend or revoke a license for a number of reasons, including if the licensees fail to abide by public health, fire, and safety regulations or if anyone illegally gambles on site. In some cases, such as for minor or inadvertent violations by a single employee, a civil fine may be more appropriate. The board should have the discretion to impose a reasonable penalty, rather than a suspension or revocation.

- Grants the board the overbroad authority to “impose conditions or restrictions on a license.” (Sec. 22, 17.38.400)
- Only a licensee may have a direct or indirect financial interest in a licensee. (Sec. 22, 17.38.440)

This would likely create unnecessary obstacles to raising capital.

- Repeals comprehensive legal protections for marijuana establishments and their staff and replaces them with problematic language. (Sec. 33 repeals 17.38.070)

As was mentioned above, one court that heard a marijuana-related preemption case found that a state could not affirmatively “authorize” conduct violating federal law (i.e., *Emerald Steel v. BOLI*, Oregon Supreme Court). Ballot Measure 2 was carefully crafted to clearly make marijuana establishments and their staffs’ conduct lawful and exempt from criminal penalties under state law. This proposal would delete those comprehensive legal protections and replace them with sections “authorizing” conduct. This would make the law more susceptible to a preemption challenge. (Sec. 22, 17.38. 200-17.38.)

Adding protections for boutique growers and home growers would be welcome, but deleting this crucial language from the initiative would be extremely concerning.