February 3, 2015

Regarding: HB 59
Position: Oppose Unless Amended

Alaska House Health & Social Services Committee
Attention Representative Paul Seaton, Chair
Pouch V
State Capitol
Juneau, Alaska 99801

Cc: Committee members

Dear Chair Seaton 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 the need for thoughtful and deliberate rulemaking, and understand that it is with that goal in mind that HB 59 was drafted. Nevertheless, we have confidence in the ability of the Alcohol Beverage Control Board to adequately undertake the mandate handed to them by the voters under Measure 2. Cynthia Franklin, Director of the ABC Board, has already begun research on the matter of regulating edibles, and appears willing and able to abide by these deadlines. Delaying even a portion of its implementation would contradict the will of the voters. Concentrates are included under the definition of marijuana in Measure 2, and the manufacture, sales, and possession of such products should be treated with parity.

It is our position that HB 59 is unconstitutional as drafted. We have outlined our specific concerns below, and appreciate the opportunity to testify before this committee today. 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 HB 59

1. **HB 59 impermissibly delays implementation of portions of Measure 2 relating to marijuana concentrates.** (Sec. 1)

The definition of "marijuana" in Measure 2 makes clear that it includes marijuana concentrates. The initiative also makes clear that the state has until November 2015 to craft regulations to implement the law. Thus, HB 59 fundamentally alters the timeline for implementation approved by the voters of Alaska by banning the production and sale of "marijuana" for a year. The legislature does not have the authority to delay portions of that implementation.

Furthermore, HB 59 defines "marijuana concentrate" as "an oil, liquid, or other substance created by extracting cannabinoids from marijuana through the use of a solvent other than water for the purpose of increasing the strength or proportion of the cannabinoids." One well-known cannabinoid that would fall under this definition is cannabidiol, known as CBD. Banning the possession and use of such concentrates would be particularly harmful to patients, many of who suffer from debilitating conditions requiring higher ratios of CBD and other cannabinoids.

2. **HB 59 changes the term "registration" to "license" and adds the phrase "and permitted by" in relation to business registrations.** (various sections)

The word "registration" was carefully chosen in light of court decisions on federal preemption. (See e.g. *Emerald Steel v. BOLI*, Oregon Supreme Court.) "License" and "permitted by" suggest 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.

3. **The creation of an affirmative defense for product manufacturers.** (Sec. 2, 11.71.092)

In the context of a criminal law revisions bill, SB 30, we objected strongly to replacing comprehensive legal protections with a mere defense. While we note that unlike the initial draft of SB 30, HB 59 retains Measure 2's comprehensive legal protections (AS 17.38.070), an exemption from penalties is far more protective than is a defense. Notably, SB 30 is being reworded to better conform to voters' intent, including by replacing the defense with a more appropriate approach.

4. Amends 17.38.100 of Measure 2 to impermissibly ban production of marijuana concentrates by licensed marijuana establishments. (Sec. 12)

Marijuana concentrates exist in Alaska today, and they would continue to exist even if HB 59 were enacted in its current form. Passing HB 59 would simply ensure that control over the sales and production of such concentrates remains in the hands of criminals. The longer such products are prohibited in the legal market, the longer criminals will profit from their manufacture and sale. This would increase the risk of explosions because small manufacturers would not have the safety requirements in place that businesses would.

HB 59 goes a step further and bans even the possession of "marijuana concentrates." As defined in this bill, that excludes concentrates manufactured with water. This poses an enforcement problem, as it would be impossible to identify by plain view whether the concentrate in question was processed with water or other solvents. It should remain legal to possess and use such concentrates.

However, we agree that it is reasonable and in the best interest of public health and safety to prohibit certain solvent-based extractions in the home. Certain extraction processes can only be performed safely by professional, registered facilities equipped with the correct equipment and safeguards. We would be supportive of an amendment to HB 59 clarifying that the *manufacture* (not possession) of marijuana concentrates using potentially hazardous methods is prohibited in unregistered facilities, and specifically, in residential buildings. (However, this is likely unnecessary since SB 30 includes similar language.) An exception should be made for extractions that do not pose threats — for both water-based and vegetable glycerin-based extractions.

4. **HB 59 creates a new definition of "marijuana concentrate."** (Sec. 22)

This restrictive definition is inappropriate because it is used in reference to marijuana establishments, which can safely manufacture concentrates in accordance with thoughtful safety regulations, such as those in place in Denver.

Also of note, another bill under consideration (SB 30) also creates a definition of "marijuana concentrate" that may conflict with this proposed definition. We would advise bill sponsors to coordinate on this issue.