



**Testimony of Kimberly McCullough, Legislative Director
Concerning HB 3400 and the -1 Amendments
Joint Committee Implementing Measure 91
May 20, 2015**

Chair Lininger, Chair Burdick, and Members of the Committee:

Thank you for the opportunity to submit comments regarding HB 3400, and more specifically regarding the proposed -1 amendments, which include a variety of changes to Measure 91.

Residency

Section 12 of the -1 amendments requires licensees to be residents of Oregon for two or more years. We are concerned that this provision is likely a per se violation of the dormant Commerce Clause, which prohibits laws which facially discriminate against out-of-state actors. We would be happy to provide additional analysis on this issue if it is needed. Please let me know if that is the case, and I can follow up with a written legal analysis.

Age Verification

Section 26 requires retailers to use age verification scanners. We are pleased that the committee has included provisions indicating that (a) the commission may not use information obtained by a verification scanner for any purpose other than age verification, and (b) the information obtained by a scanner may not be retained by the commission. We would like to suggest a minor amendment to these provisions to clarify that a retailer is also restricted from retaining such information or using it for anything other than age verification purposes.

Civil Penalties

Section 29 allows imposition of civil penalties up to \$5000 per day, per violation. Our understanding is that this provision will be altered to mirror ORS 471.990, which provides lower penalties for violations of alcohol regulations.¹ We support such a change, as the \$5000 per day, per violation, is a severe penalty.

Crimes

Measure 91 reflects a recognition by the people of Oregon that it is time for the war on marijuana to end. It is our hope that the State of Oregon will continue to move toward harm reduction methods, such as education and treatment—rather than criminalization—to deal with drug addiction and abuse. For these reasons, we are pleased to see the provisions in Sections 122 through 124 of

¹ The maximum civil penalty the OLCC may impose related to alcohol regulation is a single fine (not multiplied for each day the violation continues) of \$500 for individuals and \$1000 for corporations, with a presumptive fine of \$160. ORS 471.990.

the -1 amendments, which provide for reduction of sentences for unlawful manufacture and delivery of marijuana, as well as unlawful possession of marijuana by minors.

We note that the reduced sentences have not yet been determined (they are left blank in the -1 amendments), and we urge the committee to consider the people of Oregon's strong message against criminalization of marijuana when determining the reduced sentences in these sections. In particular, because the repercussions of criminal convictions are very serious and have a huge impact on the lives of those convicted and their dependents, loved ones, and families, we urge the committee to reduce all of these offenses as much as possible (violations being preferable to misdemeanors, both of which are preferable to felonies). In addition, because young people sometimes make mistakes, and because criminal convictions can hinder a young person's ability to thrive and grow into a productive adult citizen, we urge the committee to be particularly careful to limit all penalties which apply to youth (preferably violations).

Exonerations

Earlier this session, Representatives Frederick, Lininger, and Witt sponsored HB 3372, which would have provided for reduction of sentence for inmates convicted of a crime related to marijuana and sentenced before July 1, 2015, who would not be culpable, or who would be culpable of committing a lesser offense, if the inmate had been sentenced on or after July 1, 2015. HB 3372 would have also allowed for persons who had been arrested or convicted of manufacture, delivery or possession of marijuana to more easily get their criminal records expunged.

ACLU of Oregon strongly supported HB 3371 and we urge this committee to adopt similar provisions in HB 3400. The voters of Oregon have sent a clear message that it is time to end criminalization of marijuana. Providing for sentence reduction and exoneration will ensure that criminalization truly ends now. Now that marijuana has been legalized, no Oregonian should be serving time in prison or have to suffer the collateral consequences of a criminal conviction for activities which Oregonians will be able to freely engage in after July of this year.

Opt-Out Provisions

We are happy to see that Measure 91's opt-out provisions remain unchanged in the -1 amendments. It is our hope that Measure 91's opt-out provisions—which reflect the will of the voters of Oregon—are not altered by the Legislature and that this does not become an issue of contention.

Thank you for your time and consideration. Please feel free to contact me if you have any questions, comments, or concerns at kmccullough@aclu-or.org.