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March 7, 2016

Senator William Brownsberger
Representative John Fernandes
Members of the Joint Committee on Judiciary
State House
Boston, MA 02133

Re: Letter in opposition to House Bill 3932, *An Act relative to the regulation and taxation of marijuana act*

Dear Chairman Brownsberger, Chairman Fernandes, and Committee Members:

Associated Industries of Massachusetts (AIM) wishes to be recorded in opposition to **House bill 3932, *An Act relative to the regulation and taxation of marijuana act***. AIM's mission is to promote the prosperity of the Commonwealth of Massachusetts by improving the economic climate and advocating fair and equitable public policy on behalf of our thousands of member employers and their employees, throughout the state. We have grave concerns with the policy of legalizing marijuana.

The legalization of marijuana in Massachusetts would create considerable uncertainty for employers relative to their legal rights and obligations, particularly as relates to workplace drug policies. These employers would operate in an environment which state law permits private use of marijuana, while federal law, which is often the overriding jurisdiction in employment scenarios, prohibits marijuana use.

Workplace drug policies exist to protect not just employers, but fellow employees and members of the general public. The apparent conflict of state and federal law produces confusion about liability and leaves employers vulnerable to lawsuits for on-the-job accidents resulting from marijuana use. With legalized marijuana use, we create the risk of employees coming to work with drugs still in their system, and employers unsure how to fulfill their legal obligation to provide a safe workplace environment.

For example, how will an employer respond to a worker operating heavy equipment on a job site under the influence of marijuana? Many jobs, particularly those in safety-sensitive fields like transportation or manufacturing, must adhere to federal regulations that still prohibit the use of any substance that creates impairment. .

In Colorado employers are already struggling with the confusion between state and federal law. In 2015, for example, the Colorado Supreme Court ruled, in a 6-0 decision, that use of marijuana is not a protected right under the state's "lawful activities" statute because the state statute refers to activities that are lawful under state *and* federal law.

Although that decision reinforces Colorado employers' right to set or maintain zero-tolerance drug policies for their workplaces, it also positions them in a sort of limbo between state and federal law.

Another issue is that many companies receive favorable workers' compensation insurance rates by declaring themselves to be drug-free workplaces. That status may be substantiated only through drug testing employees – normally a condition of employment to which workers agree upon hiring. Even if employees are, on their personal time, using drugs legal in their state, if those drugs are indicated on their drug tests, their workplace would lose those favorable insurance rates.

Additionally, recent surveys have indicated an increase in general marijuana use when states approve the legalization of marijuana. According to the National Survey on Drug Use and Health, between 2012 and 2013 (when marijuana was legalized but states had yet to implement a regulatory framework) the percentage of adults who reported using marijuana jumped by more than 20 percent in Washington and Colorado. This policy will increase use of marijuana without clearly establishing proper liability and jurisdiction. The legal parameters of state law in this area are still murky at best, as other states have discovered.

Across the country, business and industry groups – from chambers of commerce to trade organizations – have opposed the legalization of marijuana for all these reasons. Fostering economic opportunity is worthy goal, and should be achieved through clear, safe policies that protect the rights of both employers and their workers. Thank you for the opportunity to provide these comments. Please call me at (617) 262-1180 if you have any additional questions.

Sincerely,

Richard C. Lord
President & CEO
Associated Industries of Massachusetts