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CONFERENCE CS FOR HOUSE BILL NO. 75

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE CONFERENCE COMMITTEE

Offered:

Sponsor(s): HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to background checks for persons applying to operate marijuana
2 establishments; relating to possessing, using, displaying, purchasing, growing,
3 processing, transporting, and transferring marijuana; relating to assisting another
4 person 21 years of age or older in activities related to marijuana; relating to established
5 villages and to local option elections regarding the operation of marijuana
6 establishments; and providing for an effective date."

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 * **Section 1.** AS 12.62.400(a) is amended to read:

9 (a) To obtain a national criminal history record check for determining a
10 person's qualifications for a license, permit, registration, employment, or position, a
11 person shall submit the person's fingerprints to the department with the fee established
12 by AS 12.62.160. The department may submit the fingerprints to the Federal Bureau
13 of Investigation to obtain a national criminal history record check of the person for the

purpose of evaluating a person's qualifications for

(1) a license or conditional contractor's permit to manufacture, sell, offer for sale, possess for sale or barter, traffic in, or barter an alcoholic beverage under AS 04.11;

(2) licensure as a mortgage lender, a mortgage broker, or a mortgage loan originator under AS 06.60;

(3) admission to the Alaska Bar Association under AS 08.08;

(4) licensure as a collection agency operator under AS 08.24;

(5) a certificate of fitness to handle explosives under AS 08.52;

(6) licensure as a massage therapist under AS 08.61;

(7) licensure to practice nursing or certification as a nurse aide under AS 08.68;

(8) certification as a real estate appraiser under AS 08.87;

(9) a position involving supervisory or disciplinary power over a minor or dependent adult for which criminal justice information may be released under AS 12.62.160(b)(9);

(10) a teacher certificate under AS 14.20;

(11) licensure as a security guard under AS 18.65.400 - 18.65.490;

(12) a concealed handgun permit under AS 18.65.700 - 18.65.790;

(13) licensure as an insurance producer, managing general agent, reinsurance intermediary broker, reinsurance intermediary manager, surplus lines broker, or independent adjuster under AS 21.27;

(14) serving and executing process issued by a court by a person designated under AS 22.20.130;

(15) a school bus driver license under AS 28.15.046;

(16) licensure as an operator or an instructor for a commercial driver training school under AS 28.17;

(17) registration as a broker-dealer, agent, investment adviser representative, or state investment adviser under AS 45.55.030 - 45.55.060;

(18) a registration or license to operate a marijuana establishment under AS 17.38.

* **Sec. 2.** AS 17.38.020 is amended to read:

Sec. 17.38.020. Personal use of marijuana. Notwithstanding any other provision of law, except as otherwise provided in this chapter, the following acts, by persons 21 years of age or older, are lawful and **are not** [SHALL NOT BE A] criminal or civil **offenses** [OFFENSE] under Alaska law or the law of any political subdivision of Alaska or **bases** [BE A BASIS] for seizure or forfeiture of assets under Alaska law:

(1) possessing, using, displaying, purchasing, or transporting marijuana accessories or one ounce or less of marijuana;

(2) possessing, growing, processing, or transporting **not** [NO] more than six marijuana plants, with three or fewer being mature, flowering plants, and possession of the marijuana produced by the plants on the premises where the plants were grown, **except that not more than 12 marijuana plants, with six or fewer being mature, flowering plants, may be present in a single dwelling regardless of the number of persons 21 years of age or older residing in the dwelling;**

(3) transferring one ounce or less of marijuana and up to six immature marijuana plants to a person who is 21 years of age or older without remuneration;

(4) consumption of marijuana, except that nothing in this chapter **permits** [SHALL PERMIT] the consumption of marijuana in public; and

(5) assisting, **aiding, or supporting** another person who is 21 years of age or older in any of the acts described in (1) - (4) of this section.

* **Sec. 3.** AS 17.38.200(a) is amended to read:

(a) Each application or renewal application for a registration to operate a marijuana establishment shall be submitted to the board. A renewal application may be submitted up to 90 days **before** [PRIOR TO] the expiration of the marijuana establishment's registration. **When filing an application under this subsection, the applicant shall submit the applicant's fingerprints and the fees required by the Department of Public Safety under AS 12.62.160 for criminal justice information and a national criminal history record check. The board shall forward the fingerprints and fees to the Department of Public Safety to obtain a report of criminal justice information under AS 12.62 and a national criminal history record check under AS 12.62.400.**

1 * **Sec. 4.** AS 17.38.210(a) is amended to read:

2 (a) A local government may prohibit the operation of marijuana cultivation
3 facilities, marijuana product manufacturing facilities, marijuana testing facilities, or
4 retail marijuana stores through the enactment of an ordinance or by a voter initiative.

5 **The operation of marijuana cultivation facilities, marijuana product**
6 **manufacturing facilities, marijuana testing facilities, and retail marijuana stores**
7 **in the unorganized borough outside of a municipality is prohibited. An**
8 **established village may permit the operation of marijuana cultivation facilities,**
9 **marijuana product manufacturing facilities, marijuana testing facilities, or retail**
10 **marijuana stores as provided in AS 17.38.300.**

11 * **Sec. 5.** AS 17.38.210(a), as amended by sec. 4 of this Act, is amended to read:

12 (a) A local government may prohibit the operation of marijuana cultivation
13 facilities, marijuana product manufacturing facilities, marijuana testing facilities, or
14 retail marijuana stores through the enactment of an ordinance or by a voter initiative.

15 [THE OPERATION OF MARIJUANA CULTIVATION FACILITIES,
16 MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA
17 TESTING FACILITIES, AND RETAIL MARIJUANA STORES IN THE
18 UNORGANIZED BOROUGH OUTSIDE OF A MUNICIPALITY IS
19 PROHIBITED.] An established village may **prohibit** [PERMIT] the operation of
20 marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana
21 testing facilities, or retail marijuana stores as provided in AS 17.38.300.

22 * **Sec. 6.** AS 17.38.210 is amended by adding a new subsection to read:

23 (m) Except as provided in AS 29, the exercise of the powers authorized by this
24 section by a borough may be exercised only on a nonareawide basis. In this
25 subsection, "nonareawide" means throughout the area of a borough outside all cities in
26 the borough.

27 * **Sec. 7.** AS 17.38 is amended by adding new sections to read:

28 **Sec. 17.38.300. Local option election by an established village.** (a) If a
29 majority of the voters voting on the question vote to approve the option, an established
30 village shall exercise a local option to permit the operation of one or more of the
31 following types of marijuana establishments:

- (1) marijuana cultivation facilities;
- (2) marijuana product manufacturing facilities;
- (3) marijuana testing facilities; or
- (4) retail marijuana stores.

(b) A ballot question to adopt a local option under this section must at least contain language substantially similar to the following: "Shall (name of village) adopt a local option to permit (specify local option under (a) of this section)? (yes or no)."

Sec. 17.38.310. Removal of local option. (a) If a majority of the voters voting on the question vote to remove the option, an established village shall remove a local option previously adopted under AS 17.38.300. The option is repealed effective the first day of the month following certification of the results of the election.

(b) A ballot question to remove a local option under this section must at least contain language substantially similar to the following: "Shall (name of village) remove the local option currently in effect, that permits (current local option under AS 17.38.300(a)), so that there is no longer any local option in effect? (yes or no)."

Sec. 17.38.320. Effect on registrations of prohibition of marijuana establishments. If a majority of voters vote to remove a local option permitting the operation of marijuana establishments under AS 17.38.300, the board may not issue, renew, or transfer, between persons or locations, a registration for a marijuana establishment located within the perimeter of the established village. A registration that may not be renewed because of a local option election held under AS 17.38.300 is void 90 days after the results of the election are certified. A registration that expires during the 90 days after the results of a local option election are certified may be extended, until it is void under this section, by payment of a prorated portion of the annual registration fee.

Sec. 17.38.330. Procedure for local option elections. (a) An election to adopt a local option under AS 17.38.300 or remove a local option under AS 17.38.310 shall be conducted as required in this section.

(b) Upon receipt of a petition of 35 percent or more of the registered voters residing within an established village, the lieutenant governor shall place on a separate ballot at a special election the local option or removal of local option that constitutes

the subject of the petition. The lieutenant governor shall conduct the election under AS 15.

(c) An election under (b) of this section to remove a local option may not be conducted during the first 24 months after the local option was adopted or more than once in a 36-month period.

(d) After a petition has been certified as sufficient to meet the requirements of (b) of this section, another petition may not be filed or certified until after the question presented in the first petition has been voted on. A local option question to permit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores or to permit all marijuana establishments may be presented in one election.

Sec. 17.38.340. Establishment of perimeter of established village. (a) Except as provided under (b) and (c) of this section, for purposes of AS 17.38.300 and 17.38.320, the perimeter of an established village is a circle around the established village that includes an area within a five-mile radius of the post office of the established village. If the established village does not have a post office, the perimeter of an established village is a circle around the established village that includes an area within a five-mile radius of another site selected by the local governing body or by the board if the established village does not have a local governing body.

(b) If the perimeter of an established village determined under (a) of this section includes any area that is within the perimeter of another established village and, if the other established village has

(1) also adopted a local option under AS 17.38.300, the local option of the established village that is less restrictive applies in the overlapping area;

(2) not adopted a local option under AS 17.38.300, the local option does not apply in the overlapping area.

(c) If the board determines that the perimeter of an established village as provided under (a) and (b) of this section does not accurately reflect the perimeter of the established village, the board may establish the perimeter of the established village and the areas of overlapping perimeter described under (b) of this section for purposes of applying a local option selected under this chapter.

1 **Sec. 17.38.350. Notice of the results of a local option election.** If a majority
2 of the voters vote to adopt or remove a local option under AS 17.38.300 or 17.38.310,
3 the lieutenant governor shall notify the board of the results of the election immediately
4 after the results are certified. The board shall immediately notify the Department of
5 Law and the Department of Public Safety of the results of the election.

6 **Sec. 17.38.360. Bail forfeiture for certain offenses.** The supreme court shall
7 establish by rule or order a schedule of bail amounts that may be forfeited without
8 court appearance for a violation of AS 17.38.030 - 17.38.050.

9 * **Sec. 8.** AS 17.38.300, enacted by sec. 7 of this Act, is amended to read:

10 **Sec. 17.38.300. Local option election by an established village.** (a) If a
11 majority of the voters voting on the question vote to approve the option, an established
12 village shall exercise a local option to prohibit [PERMIT] the operation of one or
13 more of the following types of marijuana establishments:

- 14 (1) marijuana cultivation facilities;
15 (2) marijuana product manufacturing facilities;
16 (3) marijuana testing facilities; or
17 (4) retail marijuana stores.

18 (b) A ballot question to adopt a local option under this section must at least
19 contain language substantially similar to the following: "Shall (name of village) adopt
20 a local option to prohibit [PERMIT] (specify local option under (a) of this section)?
21 (yes or no)."

22 * **Sec. 9.** AS 17.38.310(b), enacted by sec. 7 of this Act, is amended to read:

23 (b) A ballot question to remove a local option under this section must at least
24 contain language substantially similar to the following: "Shall (name of village)
25 remove the local option currently in effect, that prohibits [PERMITS] (current local
26 option under AS 17.38.300(a)), so that there is no longer any local option in effect?
27 (yes or no)."

28 * **Sec. 10.** AS 17.38.310, enacted by sec. 7 of this Act, is amended by adding a new
29 subsection to read:

30 (c) When issuing a registration in the area that has removed a local option, the
31 board shall give priority to an applicant who was formerly registered and whose

1 registration was not renewed because of the results of the previous local option
2 election. However, an applicant described in this subsection does not have a legal right
3 to registration, and the board is not required to approve the application.

4 * **Sec. 11.** AS 17.38.320, enacted by sec. 7 of this Act, is amended to read:

5 **Sec. 17.38.320. Effect on registrations of prohibition of marijuana**
6 **establishments.** If a majority of voters vote to prohibit [REMOVE A LOCAL
7 OPTION PERMITTING] the operation of marijuana establishments under
8 AS 17.38.300, the board may not issue, renew, or transfer, between persons or
9 locations, a registration for a marijuana establishment located within the perimeter of
10 the established village. A registration that may not be renewed because of a local
11 option election held under AS 17.38.300 is void 90 days after the results of the
12 election are certified. A registration that expires during the 90 days after the results of
13 a local option election are certified may be extended, until it is void under this section,
14 by payment of a prorated portion of the annual registration fee.

15 * **Sec. 12.** AS 17.38 is amended by adding a new section to read:

16 **Sec. 17.38.325. Prohibition of sale and manufacture after election.** (a) If a
17 majority of the voters vote to prohibit the operation of marijuana establishments under
18 AS 17.38.300, a person may not knowingly sell or manufacture marijuana in the
19 established village.

20 (b) If there are registered establishments within the established village, the
21 prohibition on sale and manufacture is effective beginning 90 days after the results of
22 the election are certified.

23 (c) Nothing in this section prohibits the personal conduct authorized in
24 AS 17.38.020.

25 (d) A person who violates this section is guilty, upon conviction, of a class A
26 misdemeanor. Each violation is a separate offense.

27 * **Sec. 13.** AS 17.38.330(d), enacted by sec. 7 of this Act, is amended to read:

28 (d) After a petition has been certified as sufficient to meet the requirements of
29 (b) of this section, another petition may not be filed or certified until after the question
30 presented in the first petition has been voted on. A local option question to prohibit
31 [PERMIT] the operation of marijuana cultivation facilities, marijuana product

1 manufacturing facilities, marijuana testing facilities, or retail marijuana stores or to
2 **prohibit** [PERMIT] all marijuana establishments may be presented in one election.

3 * **Sec. 14.** AS 17.38.900 is amended by adding new paragraphs to read:

4 (17) "dwelling" has the meaning given in AS 11.81.900;

5 (18) "established village" means an area that does not contain any part
6 of an incorporated city or another established village and that is an unincorporated
7 community that is in the unorganized borough and that has 25 or more permanent
8 residents;

9 (19) "manufacture" has the meaning given in AS 11.71.900.

10 * **Sec. 15.** Sections 5 and 8 - 13 of this Act take effect November 1, 2018.

11 * **Sec. 16.** Except as provided in sec. 15 of this Act, this Act takes effect immediately under
12 AS 01.10.070(c).