

29-LS0345VI
Nauman/Martin
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CS FOR HOUSE BILL NO. 75(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the regulation of marijuana by municipalities; relating to
2 marijuana; and providing for an effective date."

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

4 * **Section 1.** AS 11.71.900(14) is amended to read:

5 (14) "marijuana" means all parts [THE SEEDS, AND LEAVES,
6 BUDS, AND FLOWERS] of the plant (genus) Cannabis, whether growing or not, the
7 seeds thereof, [; IT DOES NOT INCLUDE] the resin [OR OIL] extracted from any
8 part of the plant, and [PLANTS, OR] any compound, manufacture, [SALT,]
9 derivative, mixture, or preparation of the plant, its seeds, or its resin, including
10 marijuana concentrate; "marijuana" [FROM THE RESIN OR OIL, INCLUDING
11 HASHISH, HASHISH OIL, AND NATURAL OR SYNTHETIC
12 TETRAHYDROCANNABINOL; IT] does not include [THE STALKS OF THE
13 PLANT,] fiber produced from the stalks, oil or cake made from the seeds of the plant,
14 [ANY OTHER COMPOUND, MANUFACTURE, SALT, DERIVATIVE,

1 MIXTURE, OR PREPARATION OF THE STALKS, FIBER, OIL OR CAKE, OR
2 THE] sterilized seed of the plant that [WHICH] is incapable of germination, or the
3 weight of any other ingredient combined with marijuana to prepare topical or
4 oral administrations, food, drink, or other products;

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

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

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

13 (2) possessing, growing, processing, or transporting **not** [NO] more
14 than six marijuana plants, with three or fewer being mature, flowering plants, and
15 possession of the marijuana produced by the plants on the premises where the plants
16 were grown, except that not more than 12 marijuana plants, with six or fewer
17 being mature, flowering plants, may be present in a single residence where two or
18 more persons 21 years of age or older reside;

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

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

23 (5) assisting, **aiding, or supporting** another person who is 21 years of
24 age or older in any of the acts described in (1) - (4) of this section; assisting under
25 this paragraph does not include

26 (A) using, displaying, purchasing, or transporting
27 marijuana in excess of the amount allowed in this section;

28 (B) possessing, growing, processing, or transporting
29 marijuana plants in excess of the amount allowed in this section.

30 * Sec. 3. AS 17.38.040 is amended to read:

31 Sec. 17.38.040. **Public consumption banned, penalty.** It is unlawful to

1 consume marijuana in a public place. A person who violates this section is guilty of a
2 violation punishable by a fine of up to \$100.

3 * **Sec. 4.** AS 17.38.070(f) is amended to read:

4 (f) Nothing in this section prevents the imposition of penalties on [UPON]
5 marijuana establishments for violating this chapter or rules adopted by the board or a
6 municipality under [LOCAL GOVERNMENTS PURSUANT TO] this chapter.

7 * **Sec. 5.** AS 17.38.100(c) is amended to read:

8 (c) Within 10 days after receipt of [UPON RECEIVING] an application or
9 renewal application for a marijuana establishment, the board shall notify the
10 municipality of the board's receipt of the application and [IMMEDIATELY]
11 forward a copy of each application and half of the registration application fee to the
12 local regulatory authority for the municipality [LOCAL GOVERNMENT] in which
13 the applicant desires to operate the marijuana establishment, unless the municipality
14 [LOCAL GOVERNMENT] has not designated a local regulatory authority under
15 [PURSUANT TO] AS 17.38.110(c).

16 * **Sec. 6.** AS 17.38.100(d) is amended to read:

17 (d) Within [45 TO] 90 days after receiving an application or renewal
18 application, the board shall issue an annual registration to the applicant unless the
19 board finds the applicant is not in compliance with regulations adopted under
20 [ENACTED PURSUANT TO] AS 17.38.090 or the board is notified by the relevant
21 municipality [LOCAL GOVERNMENT] that the applicant is not in compliance with
22 ordinances enacted and regulations adopted under [MADE PURSUANT TO]
23 AS 17.38.110 and in effect at the time of application.

24 * **Sec. 7.** AS 17.38 is amended by adding a new section to read:

25 **Sec. 17.38.105. Protest and review of registration or renewal.** (a) A
26 municipality may protest the issuance or renewal of a registration by sending the board
27 and the applicant a protest and the reasons for the protest within 60 days after receipt
28 by the municipality from the board of notice of the filing of the application. The board
29 may not accept a protest received after the 60-day period, and, in no event, may a
30 protest cause the board to reconsider an approved renewal of a registration. The board
31 shall consider a protest and testimony received at a hearing conducted under (e)(1) or

1 (2) of this section when it considers the application or continued operation, and the
2 protest and the record of the hearing conducted under (e)(1) or (2) of this section shall
3 be kept as part of the board's permanent record of its review. If an application or
4 continued operation is protested, the board shall deny the application or continued
5 operation unless the board finds that the protest is arbitrary, capricious, and
6 unreasonable.

7 (b) If the permanent residents residing outside of but within two miles of an
8 incorporated city or an established village wish to protest the issuance or renewal of a
9 registration within the city or village, they shall file with the board a petition meeting
10 the requirements of (e)(3) of this section requesting a public hearing within 30 days
11 after the receipt of notice required under AS 17.38.100(c). The board shall consider
12 testimony received at a hearing conducted under (e)(3) of this section when it
13 considers the application, and the record of a hearing conducted under (e)(3) of this
14 section shall be retained as part of the board's permanent record of its review of the
15 application.

16 (c) A municipality may recommend that a registration be issued or renewed
17 with conditions. The board shall consider recommended conditions and testimony
18 received at a hearing conducted under (e)(1) or (2) of this section when it considers the
19 application or continued operation. The recommended conditions and the record of the
20 hearing conducted under (e)(1) or (2) of this section shall be kept as part of the board's
21 permanent record of its review. If the municipality recommends conditions, the board
22 shall impose the recommended conditions unless the board finds that the
23 recommended conditions are arbitrary, capricious, or unreasonable. If a condition
24 recommended by a municipality is imposed on a registrant, the municipality shall
25 assume responsibility for monitoring compliance with the condition, except as
26 otherwise provided by the board.

27 (d) In addition to the right to protest under (a) of this section, a municipality
28 may notify the board that the municipality has determined that a registrant has violated
29 a provision of this chapter or a condition imposed on the registrant by the board.
30 Unless the board finds that the municipality's determination is arbitrary, capricious, or
31 unreasonable, the board shall prepare the determination as an accusation against the

1 registrant under AS 44.62.360 and conduct proceedings to resolve the matter.

2 (e) The board

3 (1) may, except as provided in (2) of this subsection, hold a hearing to
4 ascertain the basis of a protest to an application by a municipality;

5 (2) shall hold a public hearing if a protest to the issuance or renewal of
6 a registration made by a municipality is based on a question of law;

7 (3) shall hold a public hearing on the question of whether the issuance
8 or renewal of a registration in a city or village would be in the public interest if a
9 petition containing the signatures of 35 percent of the adult residents having a
10 permanent place of abode outside of but within two miles of an incorporated city or an
11 established village is filed with the board;

12 (4) shall send notice of a hearing conducted under this subsection 20
13 days before the hearing to each community council established within the municipality
14 and to each nonprofit community organization entitled to notification under
15 AS 17.38.100(c).

16 * **Sec. 8.** AS 17.38.110(a) is amended to read:

17 (a) A municipality [LOCAL GOVERNMENT] may prohibit the operation of
18 marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana
19 testing facilities, [OR] retail marijuana stores, or marijuana clubs through the
20 enactment of an ordinance or by a voter initiative. An established village may
21 prohibit the operation of marijuana establishments by a voter initiative as
22 provided in AS 17.38.200.

23 * **Sec. 9.** AS 17.38.110(b) is amended to read:

24 (b) A municipality [LOCAL GOVERNMENT] may adopt [ENACT]
25 ordinances or regulations not in conflict with this chapter or with regulations adopted
26 under [ENACTED PURSUANT TO] this chapter, governing the time, place, manner,
27 and number of marijuana establishment operations. A municipality [LOCAL
28 GOVERNMENT] may establish civil and criminal penalties for violation of an
29 ordinance or regulation governing the time, place, and manner of a marijuana
30 establishment that may operate in the municipality [SUCH LOCAL
31 GOVERNMENT].

1 * **Sec. 10.** AS 17.38.110(c) is amended to read:

2 (c) A municipality [LOCAL GOVERNMENT] may designate a local
3 regulatory authority that is responsible for processing applications submitted for a
4 registration to operate a marijuana establishment within the boundaries of the
5 municipality [LOCAL GOVERNMENT]. The municipality [LOCAL
6 GOVERNMENT] may provide that the local regulatory authority may issue [SUCH]
7 registrations should the issuance by the municipality [LOCAL GOVERNMENT]
8 become necessary because of a failure by the board to adopt regulations under
9 [PURSUANT TO] AS 17.38.090 or to accept or process applications in accordance
10 with AS 17.38.100.

11 * **Sec. 11.** AS 17.38.110(d) is amended to read:

12 (d) A municipality [LOCAL GOVERNMENT] may establish procedures for
13 the issuance, suspension, and revocation of a registration issued by the municipality
14 [LOCAL GOVERNMENT] in accordance with (f) [OF THIS SECTION] or (g) of this
15 section. These procedures shall be subject to all requirements of AS 44.62
16 (Administrative Procedure Act).

17 * **Sec. 12.** AS 17.38.110(e) is amended to read:

18 (e) A municipality [LOCAL GOVERNMENT] may establish a schedule of
19 annual operating, registration, and application fees for marijuana establishments,
20 provided, the application fee is [SHALL ONLY BE] due only if an application is
21 submitted to a municipality [LOCAL GOVERNMENT] in accordance with (f) of this
22 section and a registration fee is [SHALL ONLY BE] due only if a registration is
23 issued by a municipality [LOCAL GOVERNMENT] in accordance with (f) [OF
24 THIS SECTION] or (g) of this section.

25 * **Sec. 13.** AS 17.38.110(h) is amended to read:

26 (h) A local regulatory authority issuing a registration to an applicant shall do
27 so within 90 days after [OF] receipt of the submitted or resubmitted application unless
28 the local regulatory authority finds and notifies the applicant that the applicant is not
29 in compliance with ordinances and regulations adopted under [MADE PURSUANT
30 TO] (b) of this section in effect at the time the application is submitted to the local
31 regulatory authority. The municipality [LOCAL GOVERNMENT] shall notify the

1 board if an annual registration has been issued to the applicant.

2 * **Sec. 14.** AS 17.38.110(i) is amended to read:

3 (i) A registration issued by a municipality [LOCAL GOVERNMENT] in
4 accordance with (f) [OF THIS SECTION] or (g) of this section shall have the same
5 force and effect as a registration issued by the board in accordance with AS 17.38.100.
6 The holder of the [SUCH] registration is [SHALL] not [BE] subject to regulation or
7 enforcement by the board during the term of that registration.

8 * **Sec. 15.** AS 17.38.110(j) is amended to read:

9 (j) A subsequent or renewed registration may be issued under (f) of this
10 section on an annual basis only upon resubmission to the municipality [LOCAL
11 GOVERNMENT] of a new application submitted to the board under [PURSUANT
12 TO] AS 17.38.100.

13 * **Sec. 16.** AS 17.38.110 is amended by adding new subsections to read:

14 (m) A municipality that has not prohibited the operation of marijuana
15 cultivation facilities, marijuana product manufacturing facilities, marijuana testing
16 facilities, retail marijuana stores, or marijuana clubs under (a) of this section may
17 create a local advisory board to advise the municipality on issues related to licensing
18 of marijuana establishments and regulation of marijuana.

19 (n) Except as provided in AS 29, the exercise of the powers authorized by this
20 section by a borough may be exercised only on a nonareawide basis. In this
21 subsection, "nonareawide" means throughout the area of a borough outside all cities in
22 the borough.

23 * **Sec. 17.** AS 17.38 is amended by adding new sections to read:

24 **Sec. 17.38.200. Local option.** (a) If a majority of the voters voting on the
25 question vote to approve the option, an established village shall exercise a local option
26 to prohibit the operation of marijuana establishments.

27 (b) A ballot question to adopt a local option under this section must at least
28 contain language substantially similar to the following: "Shall (name of village) adopt
29 a local option to prohibit the operation of marijuana establishments? (yes or no)."

30 **Sec. 17.38.210. Removal of local option.** (a) If a majority of the voters voting
31 on the question vote to remove the option, an established village shall remove a local

1 option previously adopted under AS 17.38.200. The option is repealed effective the
2 first day of the month following certification of the results of the election.

3 (b) A ballot question to remove a local option under this section must at least
4 contain language substantially similar to the following: "Shall (name of village)
5 remove the local option currently in effect, that prohibits the operation of marijuana
6 establishments, so that there is no longer any local option in effect? (yes or no)."

7 (c) When issuing a registration in the area that has removed a local option, the
8 board shall give priority to an applicant who was formerly registered and whose
9 registration was not renewed because of the results of the previous local option
10 election. However, an applicant described in this subsection does not have a legal right
11 to registration, and the board is not required to approve the application.

12 **Sec. 17.38.220. Effect on registrations of prohibition of marijuana**
13 **establishments.** If a majority of voters vote to prohibit the operation of marijuana
14 establishments under AS 17.38.200, the board may not issue, renew, or transfer,
15 between persons or locations, a registration for a marijuana establishment located
16 within the perimeter of the established village. A registration that may not be renewed
17 because of a local option election held under AS 17.38.200 is void 90 days after the
18 results of the election are certified. A registration that expires during the 90 days after
19 the results of a local option election are certified may be extended, until it is void
20 under this section, by payment of a prorated portion of the annual registration fee.

21 **Sec. 17.38.230. Prohibition of sale, purchase, and manufacture after**
22 **election.** (a) If a majority of the voters vote to prohibit the operation of marijuana
23 establishments under AS 17.38.200, a person may not knowingly sell, purchase, or
24 manufacture marijuana in the established village.

25 (b) If there are registered establishments within the established village, the
26 prohibition on sale, purchase, and manufacture is effective beginning 90 days after the
27 results of the election are certified. If there are no registered establishments within the
28 established village, the prohibition on possession is effective beginning 60 days after
29 the results of the election are certified.

30 (c) A person who violates this section is guilty, upon conviction, of a class A
31 misdemeanor. Each violation is a separate offense.

1 **Sec. 17.38.240. Procedure for local option elections.** (a) An election to adopt
2 a local option under AS 17.38.200 or remove a local option under AS 17.38.210 shall
3 be conducted as required in this section.

4 (b) Upon receipt of a petition of 35 percent or more of the registered voters
5 residing within an established village, the lieutenant governor shall place on a separate
6 ballot at a special election the local option or removal of local option that constitutes
7 the subject of the petition. The lieutenant governor shall conduct the election under
8 AS 15.

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

12 (d) After a petition has been certified as sufficient to meet the requirements of
13 (b) of this section, another petition may not be filed or certified until after the question
14 presented in the first petition has been voted on. Only one local option question may
15 be presented in an election.

16 **Sec. 17.38.250. Establishment of perimeter of established village.** (a)
17 Except as provided under (b) and (c) of this section, for purposes of AS 17.38.200 and
18 17.38.220, the perimeter of an established village is a circle around the established
19 village that includes an area within a five-mile radius of the post office of the
20 established village. If the established village does not have a post office, the perimeter
21 of an established village is a circle around the established village that includes an area
22 within a five-mile radius of another site selected by the local governing body or by the
23 board if the established village does not have a local governing body.

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

27 (1) also adopted a local option under AS 17.38.200, the local option of
28 the established village that is less restrictive applies in the overlapping area;

29 (2) not adopted a local option under AS 17.38.200, the local option
30 does not apply in the overlapping area.

31 (c) If the board determines that the perimeter of an established village as

1 provided under (a) and (b) of this section does not accurately reflect the perimeter of
2 the established village, the board may establish the perimeter of the established village
3 and the areas of overlapping perimeter described under (b) of this section for purposes
4 of applying a local option selected under this chapter.

5 **Sec. 17.38.260. Notice of the results of a local option election.** If a majority
6 of the voters vote to prohibit or remove a local option under AS 17.38.200 or
7 17.38.210, the lieutenant governor shall notify the board of the results of the election
8 immediately after the results are certified. The board shall immediately notify the
9 Department of Law and the Department of Public Safety of the results of the election.

10 * **Sec. 18.** AS 17.38.900(5) is amended to read:

11 (5) "local regulatory authority" means the office or entity designated to
12 process marijuana establishment applications by a municipality [LOCAL
13 GOVERNMENT];

14 * **Sec. 19.** AS 17.38.900(9) is amended to read:

15 (9) "marijuana establishment" means a marijuana cultivation facility, a
16 marijuana testing facility, a marijuana product manufacturing facility, [OR] a retail
17 marijuana store, or a marijuana club;

18 * **Sec. 20.** AS 17.38.900(6) is amended to read:

19 (6) "marijuana" means all parts of the plant of the genus cannabis
20 whether growing or not, the seeds thereof, the resin extracted from any part of the
21 plant, and every compound, manufacture, [SALT,] derivative, mixture, or preparation
22 of the plant, its seeds, or its resin, including marijuana concentrate; "marijuana" does
23 not include fiber produced from the stalks, oil, or cake made from the seeds of the
24 plant, sterilized seed of the plant that [WHICH] is incapable of germination, or the
25 weight of any other ingredient combined with marijuana to prepare topical or oral
26 administrations, food, drink, or other products;

27 * **Sec. 21.** AS 17.38.900 is amended by adding new paragraphs to read:

28 (15) "established village" means an area that does not contain any part
29 of an incorporated city or another established village and that is an unincorporated
30 community that is in the unorganized borough and that has 25 or more permanent
31 residents;

1 (16) "marijuana club" means an entity registered to allow consumption
2 of marijuana by members of the club on the registered premises and whose members
3 are 21 years of age or older;

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

5 (18) "residence" means a single dwelling unit.

6 * **Sec. 22.** AS 17.38.100(d), 17.38.100(e), and 17.38.900(4) are repealed.

7 * **Sec. 23.** This Act takes effect immediately under AS 01.10.070(c).