



ALASKA STATE SENATE

SENATE JUDICIARY COMMITTEE

Senator Lesil McGuire – Chair, Senator John Coghill – Vice-Chair, Senator Peter Micciche,
Senator Mia Costello, Senator Bill Wielechowski

SECTIONAL ANALYSIS

Senate Bill 62 (“SB62”): “An Act relating to the regulation of marijuana, marijuana testing, marijuana products, and marijuana accessories; relating to the licensing of marijuana retailers, producers, processors, boutique producers, brokers, and home growers; relating to taxation of marijuana; and providing for an effective date” (29-LS0405\E)

- Section 1: Inspection by DEC of marijuana testing facilities
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Section 1: AS 03.05.011 adds a new subsection requiring the Commissioner of Environmental Conservation to inspect and certify marijuana testing facilities.

Section 2: AS 17.38.060 is amended to read that the manufacture, possession, or purchase of marijuana accessories is authorized. One can distribute or sell marijuana accessories to a person who is 21 years old or older.

Section 3: AS 17.38 is amended to add a new section (AS 17.38.075). AS 17.38.075 places limitations on advertising. A person may not advertise or market marijuana or marijuana products/accessories in a manner enticing minors.

Section 4: AS 17.38.090 is amended. The focus is on rulemaking. No later than nine months after February 24, 2015 the board is required to adopt regulations for commercial licenses. The regulations may not be unreasonably impracticable (to encourage elimination of the black-market).

The regulations include: (1) procedures for issuance, renewal, suspension, and revocation of a license; (2) schedule for application of a license with fees not exceeding \$5,000 (subject to annual adjustments for inflation) unless a greater fee is necessary to carry out board responsibilities; (3) qualifications for licensure; (4) security requirements for marijuana establishments; (5) requirements for preventing sale to persons under the age of twenty-one; (6) labelling requirements; (7) health and safety standards for manufacture and cultivation; (8) restrictions on advertising and display of marijuana and marijuana products; (9) civil penalties for violations.

Privacy will be protected. Personal information about consumers will not be acquired or recorded.

Section 5: AS 17.38.090 is amended to require the board to adopt regulations for packaging and labeling of marijuana for persons that have a marijuana retailer license. New subsections include (c),(d), and (e).

Subsection (c) states the regulations must provide that: (1) marijuana must have child-proof packaging; (2) the package must be clearly labeled with contents and may not entice minors; (3) the potency and certification of safety must be on the package.

Subsection (d) states that individual doses of edible marijuana (10 milligrams or less of tetrahydrocannabinol (“THC”)) shall be individually wrapped. However the board shall allow retail sales of edible marijuana packages that contain multiple doses.

Subsection (e) states that the board shall adopt regulations regarding the potency, safety or medical characteristics of medical marijuana.

Section 6: AS 17.38.100(a) is amended to read that applications or renewals for marijuana licenses shall be submitted to the board. Renewal applications shall be submitted 90 days before the license expires.

Section 7: AS 17.38.100(c) is amended to read that the board, upon receiving an application or renewal shall immediately forward a copy to the local regulatory authority for the municipality in which the applicant desires to operate the marijuana establishment unless the municipality has not set up a local authority to process licenses.

Refunds shall be given to a municipality if the board collects money in those circumstances.

Section 8: AS 17.38.100(d) is amended to read that the board, provided there are no violations by the applicant, has 90 days to issue an annual license after receiving a new application, or renewal application.

Section 9: AS 17.38.100(e) is amended to read that the board shall consider local municipality numerical limits on marijuana establishments.

Section 10: AS 17.38.100(g) is amended to read that every marijuana establishment shall disclose where they will operate. A separate license shall be required for each location. The establishment must be in-state.

Section 11: AS 17.38.110(a) is amended to read that a municipality may prohibit a marijuana producer establishment, a marijuana processor establishment, a marijuana testing facility, or a marijuana retailer through enactment of an ordinance or voter initiative.

Section 12: AS 17.38.110(b) is amended to read that a municipality may enact ordinances or regulations that govern the time, place, manner, and number of marijuana establishment operations. Civil penalties may be established for time, place, and manner violations.

Section 13: AS 17.38.110(c) is amended to read that a municipality may process applications within the boundaries of the municipality if the board fails to adopt regulations or accept applications.

Section 14: AS 17.38.110(d) is amended to allow a municipality the ability to issue, suspend, or revoke a license if the board fails to adopt regulations or accept applications, subject to the requirements of the Administrative Procedure Act.

Section 15: AS 17.38.110(e) is amended to read that a municipality may establish a schedule for annual licensing, renewal, and application fees to marijuana establishments. Fees shall not exceed \$5,000 (subject to annual adjustments for inflation) and may not exceed the actual costs of processing the application to the point of issuance or denial.

Section 16: AS 17.38.110(f) is amended to read that an applicant may resubmit their application for license to a local regulatory authority if the board does not issue a license after May 24, 2016, and does not provide reason/notice of denial. Subsequently, the local regulatory authority may issue an annual license to the applicant. If an applicant is required to resubmit to a local authority, then the board shall refund to the local regulatory authority the application fee paid, upon request.

Section 17: AS 17.38.110(g) is amended to read that if the board does not adopt regulations on time, an applicant may submit an application directly to a local regulatory authority after February 24, 2016. The local regulatory authority may issue an annual license.

Section 18: AS 17.38.110(h) is amended to read that a local regulatory authority shall issue a license within 90 days after they receive an application, unless the application is not in compliance with relevant ordinance. The municipality shall notify the board if the annual license has been issued to the applicant.

Section 19: AS 17.38.110(i) is amended to read that a license issued by a municipality shall have the same force and effect as the license issued by the board. The holder of the license is not subject to regulation or enforcement by the board during the term of the license.

Section 20: AS 17.38.110(j) focuses on circumstances where the board has not issued regulations and the municipality has. This may or may not be the case in the first year. In the event the board does not issue regulations, AS 17.38.110(j) is amended to read that a renewed license, issued by a municipality, may be issued on an annual basis upon resubmission to the municipality. The application shall also go to the board.

Section 21: AS 17.38.110(k) is amended to read that a renewed license may be issued by a local regulatory authority on an annual basis if the board has not adopted regulations at least 90 days before the renewed license would be effective or if the board has adopted regulations but has not, at least 90 days after the adoption of the regulations, issued licenses.

Section 22: AS 17.38.200 lists the types of licenses: (1) producer license; (2) processor license; (3) retailer license; (4) boutique producer license; (5) broker license; and (6) home-grower license.

Noteworthy: The campaign to legalize marijuana insisted upon being regulated like alcohol. There are multiple licenses in the alcohol industry, including: beverage dispensary licenses, brewery licenses, package store licenses, distillery licenses, pub licenses, etc.

PRODUCER LICENSE

AS 17.38.210 focuses on the producer license. A producer license authorizes the holder to grow marijuana in-state. Additionally, the producer may sell marijuana grown on the premises to a holder of a marijuana processor or retailer license.

Accumulative producer license fees will not exceed \$5,000 (adjusted annually for inflation), unless the board needs higher fees to carry out its responsibilities.

PROCESSOR LICENSE

AS 17.38.220 focuses on the processor license. A processor license authorizes the holder to purchase marijuana from a person holding a marijuana producer or processor license.

The processor may refine, process, cook, manufacture, develop, label, and package marijuana/marijuana products. The processor may perform solvent-based extractions on marijuana. Sales of marijuana may occur to people with a processor license or a retailer license.

Accumulative processor license fees will not exceed \$5,000 (adjusted annually for inflation), unless the board needs higher fees to carry out its responsibilities.

RETAILER LICENSE

AS 17.38.230 focuses on the retailer license. A retailer license holder may sell up to one ounce of marijuana a day to an individual on a licensed premises for consumption off premises. A license holder may only buy marijuana from a producer licensee or a processor licensee.

One cannot have an alcohol license and a marijuana license at the same time.

A marijuana retailer licensee may not sell/give/furnish marijuana on the premises between 12 midnight and 8:00AM each day. No consumption of marijuana may occur on licensed premises.

No free marijuana can be distributed.

No sales to other retailer license holders.

Accumulative retailer license fees will not exceed \$5,000 (adjusted annually for inflation), unless the board needs higher fees to carry out its responsibilities.

MARIJUANA TESTING FACILITIES

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AS 17.38.240 states that marijuana testing facilities may not test, analyze or certify marijuana without being certified by the Department of Environmental Conservation.

MARIJUANA BOUTIQUE PRODUCER LICENSE

AS 17.38.250 focuses on the boutique producer license. The boutique producer license allows the holder to grow no more than 50 marijuana plants on licensed premises. Additionally the boutique producer may sell to a marijuana broker.

Accumulative boutique producer license fees will not exceed \$5,000 (adjusted annually for inflation), unless the board needs higher fees to carry out its responsibilities.

MARIJUANA BROKER LICENSE

AS 17.38.260 focuses on the marijuana broker license. The broker license allows the holder to purchase marijuana and products from a processor, boutique producer, and home grower. The broker license allows sales to retailers and processors.

Accumulative broker license fees will not exceed \$5,000 (adjusted annually for inflation), unless the board needs higher fees to carry out its responsibilities.

MARIJUANA HOME GROWER LICENSE

AS 17.38.270 focuses on the marijuana home grower license. A home grower's license allows the holder to sell to a broker any amount of plants owned by the holder.

Accumulative home grower license fees will not exceed \$5,000 (adjusted annually for inflation), unless the board needs higher fees to carry out its responsibilities.

INTEGRATED LICENSES

AS 17.38.280 focuses on integrated licenses. Integrated licenses are also called vertical licenses. With integrated licenses one person may be a producer, processor, and retailer.

The board may issue a producer and processor license to one person. A person issued an integrated producer and processor license may not grow or process marijuana on more than one licensed premises.

The board may charge a higher annual fee for an integrated license.

LICENSES

AS 17.38.290 focuses on new license applications. Applications should be made to the director on an approved form, sworn to by the applicant.

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If the applicant is a corporation, the application shall be executed by the authorized officers of the corporation. If a partnership, including a limited partnership, it shall be executed by the general partner.

The application must include: (1) name and address; (2) type of license desired; (3) description of premises, including street number; (4) application fee; (5) other information required by the board by regulation.

A corporation applying for a license shall provide the names and addresses of the president, vice-president, secretary, managing officer, all stockholders who own 10% stock or more, together with any other information required by the board.

An applicant must include proof of notice (the applicant must post a copy of the application, for 10 days, at the proposed desired location, and either provide a copy of the application to newspapers/radio/television or provide paid notice of the application once each week in newspaper or radio).

A partnership, including a limited partnership, shall provide information on the names and addresses of general partners or all partners with a 10% interest or more.

A limited liability organization that applies for a license shall provide information required by the board, including the names and addresses of all members with 10% ownership interest or more. All managers must disclose their names and addresses.

AS 17.38.300 focuses on license renewal applications. Applications for renewal must include: (1) name and address; (2) type of license desired; (3) description of premises, including street number; (4) application fee; (5) other information required by the board by regulation. Proof of notice is not required for renewals.

A list of all convictions for violations of this chapter or similar regulations that occurred in the previous two calendar years.

The timelines for license renewals are as follows: (1) on or before November 1, the renewal applications shall be mailed to the applicable address; (2) the completed renewal application shall be submitted before January 1; (3) a renewal application filed after December 31 is delinquent and will be assessed a \$500 penalty fee; (4) if December 31 falls on a weekend or holiday, the deadline will be extended to the first business day after December 31.

AS 17.38.310 focuses on transfer of licenses to another person. An application for transfer must include the same information about the transferee required in AS 17.38.250. In other words: (1) name and address; (2) type of license desired; (3) description of premises, including street number; (4) application fee; (5) other information required by the board by regulation.

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In addition, the transferor, under oath, must list all debts and taxes due. The board shall inform each listed creditor of the application and the amount owed.

A person may not charge another person more than the cost of the license for the transfer.

AS 17.38.320 focuses on applications for license location transfers. The transfer must contain the information required by the board and proof of notice.

For notice: the applicant must post a copy of the application (for 10 days) at the proposed desired location, and either provide a copy of the application to newspapers/radio/television or provide paid notice of the application once each week in newspaper or radio.

AS 17.38.330 focuses on criminal justice information and records. An applicant must submit fingerprints and the fees required by the Department of Public Safety (for the criminal justice information and national criminal history record check). This process may also occur for license renewals.

The board shall submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. Information obtained may be used when assessing issuance, transfer, or renewal of a license.

“Applicant” means individuals whose names and addresses are required on the license application.

“Criminal justice information” includes criminal history, non-conviction information, and correctional treatment information.

NOTICE

AS 17.38.340 focuses on the notice of application. The applicant must post a copy of the application (for 10 days) at the proposed desired location, and either provide a copy of the application to newspapers/radio/television or provide paid notice of the application once each week in newspaper or radio.

Upon receiving the application, the board shall provide written notice of the application to the community council and any nonprofit community organization that has requested notification. Additionally (at least 10 days before the date in which the board will take action on the application) written notice must be provided to the community council or nonprofit organization to alert them of the time and place for the hearing.

DENYING LICENSES

AS 17.38.350 focuses on denying *new* licenses. The board shall deny licenses if: (1) the issuance of the license is not in the public’s best interest; (2) it is too near a church, school, or correctional

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facility; (3) the application was not completed as required; (4) issuance of the license would violate the restrictions pertaining to that license; (5) the requirements related to zoning, ownership, location, and identity of financing have not been met; (6) the applications contains false statements.

AS 17.38.360 focuses on denying license renewals. The board shall deny license renewals if: (1) the issuance of the license is not in the public's best interest; (2) the license has been revoked for any cause; (3) non-operation of the premises for at least 30 8-hour days during the two preceding calendar years (unless construction was occurring); (4) the requirements related to zoning, ownership, location, identity and financing of licensee have not been meet; (5) renewal of the license would violate the restrictions pertaining to that license; (6) application has not been completed. (7) renewal application contains false statements.

Additionally, the board may deny renewal if the applicant is delinquent on taxes owed from the business.

AS 17.38.370 focuses on denials for relocation requests. The board shall deny the relocation applications if: (1) relocation is not in the public's best interest; (2) the relocation is outside the established village, incorporated city, or unified municipality within which the license is located; (3) transfer of ownership is concurrent to relocation and grounds for denial of the transfer of ownership are presented; (4) the application has not been completed; (5) relocation would result in a zoning violation; (6) relocation of the license would violate restrictions pertaining to that license.

AS 17.38.380 focuses on denying a transfer of license to another person. The application for transfer approval will be denied if the board finds: (1) the transfer of the license would not be in the public's best interests; (2) the application was not completed; (3) the application contains false statements; (4) the transferor has not paid debts or taxes arising from the business, unless there is satisfactory security or collateral; (5) transfer of the license would result in a violation of the provisions of this chapter relating to the identity of licenses and financing of licensees; (6) transfer of license to another person that would violate restrictions pertaining to that license; (7) the prospective transferee does not have the qualifications.

AS 17.38.390 focuses on suspension and revocation of licenses. The board shall suspend or revoke a license if: (1) a misrepresentation occurs on the application; (2) continuation of manufacture or sale of marijuana would not be in the public's best interests; (3) the licensee fails to correct a defect because of regulation or other applicable law; (4) the licensee is convicted under the controlled substances statutes; (5) conviction of agent or employee under the controlled substances statutes; (6) the licensee fails to comply with public health, fire, or safety laws; (7) the licensee uses the premises for narcotics trafficking or prostitution; (8) the licensee conducts illegal gambling on the premises; (9) the licensee allowed a public offense of moral turpitude to occur on the premises;

(10) the licensee has a violation of a board-imposed condition or restriction occurs; (11) an agent or employee has a violation of a board-imposed condition or restriction.

AS 17.38.400 allows the board, in the best interests of the public, to impose additional conditions or restrictions on a license.

AS 17.38.410 focuses on retail restrictions near churches, schools, and correctional facilities. Retailers shall not be within 200 feet of a church, school, or correctional facility.

AS 17.38.420 focuses on zoning limitations. No licenses shall be issued that conflict with zoning regulations that restrict marijuana sales.

AS 17.38.430 focuses on “persons” and “locations.” Licenses are encouraged for state residents for at least one year. Corporate licensees need to be incorporated in this state. Sole proprietors need to be residents of this state. Limited liability companies need to have all members as residents of the state. Partnerships must have all partners as residents of this state.

The specific location shall be indicated on the license. The board should be notified of changes. The board should maintain the current address of the board.

AS 17.38.440 focuses on prohibited financial interests. A person other than the licensee may not have a direct or indirect financial interest in the business.

The license may not be leased to another person.

Graduated lease-rent agreements under this title do not hold a financial interest in the business.

“Direct or indirect financial interest” means holding a legal or equitable interest. Consulting fees are not included.

AS 17.38.450 focuses on the procedure for action on license application, suspensions, and revocations.

Under most circumstances, the board shall grant or deny the license within 90 days after receipt of the application. The board is not required to give a hearing, except:

- (1) If the application is denied. Written notice of the denial must inform the applicant that he is entitled to an informal conference. If not satisfied by the informal conference, the applicant is entitled to a formal hearing by the office of administrative hearings under the Administrative Procedure Act. The hearing shall occur at the area the application is requested.
- (2) The board may hold its own hearing to ascertain public reaction. Notice for the hearing shall occur 20 days in advance of the hearing.

For suspensions or revocations, unless under AS 17.38.390(4) shall be done under the Administrative Procedure Act, except that a licensee is entitled to an opportunity to be heard informally within 10 days of the accusation being served. If still not satisfied, the licensee can request a formal hearing on the merits, unless under AS 17.38.390(4).

AS 17.38.460 focuses on suspension and revocation based on acts of employees. If an employee is the violator and the sentencing report has been sent to the board, the licensee has the burden of proof to show that the licensee did not knowingly allow the violation.

AS 17.38.470 focuses on application of precedent. The board does not need to conform or distinguish its action from past applications presenting similar facts, but, instead, may base its decision on the facts before it.

AS 17.38.480 focuses on license renewal and expiration. Licenses shall be issued for one calendar year ending on December 31 and submitted until the next February 28. If an incomplete application has been filed, or if no application is filed by February 28, then the license expires at midnight on February 28. Except if good cause is shown, the license must be returned to the board.

AS 17.38.490 focuses on the notice for expiration. On or before February 15, notice of expiration shall be sent out to those who have not applied for a renewed license or have not notified the director of the intent to do so. Failure of the director to mail this notice of expiration does not waive the requirement that the application for renewal be filed by February 28.

AS 17.38.500 focuses on appeals. Actions by board agents can be appealed to the board by the aggrieved party. Appeals from the board are heard by the Alaska Superior Court.

AS 17.38.510 focuses on refunds and forfeiture of fees. If an application is denied, the license fee less the application fee will be refunded. License fee will not be refunded unless the board determines it erred in the issuance through no fault of the applicant. If there is a revocation of license because of untrue statements, the license fee is forfeited to the state.

AS 17.38.520 focuses on civil fines. The board may impose civil fines. The board may adopt a schedule of fines. A fine may not exceed \$75,000 or an amount three times the monetary gain realized. There shall be no excessive fines.

AS 17.38.530 focuses on the surrender or destruction of a license. If the board directs, the license must be surrendered to a peace officer or agent of the board. That surrender shall occur within 10 days after loss of the premises. If the license is destroyed, the board should be notified.

AS 17.38.540 focuses on the disposition of money. Funds collected by the board should be transferred to the Department of Commerce, Community, and Economic Development

(“DCCED”) and placed in their general fund. An annual balance must be maintained by DCCED to carry out the purposes of this chapter.

AS 17.38.550 focuses on accessibility of license and licensed premises to inspection. The premises must be open for inspection by agents of the board. The license must be clearly displayed.

AS 17.38.560 clarifies that the license is a privilege, not a right.

AS 17.38.570 clarifies that the license is not subject to foreclosure, and may not be used as collateral to secure debts.

AS 17.38.580 clarifies that the license shall be issued for one year.

Section 23: AS 17.38.900(6) amends the definition of “marijuana.” “Marijuana” includes all parts of the plant whether growing or not, including the seeds, resin, and every compound, derivative, mixture, included in marijuana concentrate. “Marijuana” does not include fiber from the stalks, oil, seed that is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

Section 24: AS 17.38.900(9) is amended to mean that a “marijuana establishment” is a producer, testing facility, processor, retailer, boutique producer, broker, or home grower.

Section 25: AS 17.38.900(11) is amended to read that “marijuana products” include concentrated marijuana products including, but not limited to, edible products, ointments, and tinctures.

Section 26: AS 17.38.900(12) is amended to read that a “marijuana testing facility” means a certified entity that analyzes safety and potency of marijuana.

Section 27: AS 17.38.900 provides definitions. “Correctional facility” has the meaning given in AS 33.30.901.

“Director” is the executive director of the Alcohol Beverage Control Board.

“Marijuana boutique” is a licensee that may grow no more than 50 marijuana plants on licensed premises. Additionally, the boutique producer may sell to a marijuana broker.

“Marijuana broker” is a licensee that may purchase marijuana and products from a processor, boutique producer, and home grower. Additionally, the broker license allows sales to retailers and processors.

“Marijuana home grower” is a licensee that may sell to a broker any amount of plants owned by the holder, subject to personal use provisions.

“Marijuana processor” is a licensee that may purchase marijuana and prepare marijuana products. A marijuana processor may then sell to retailers or other processors, but not consumers.

“Marijuana producer” is a licensee that may cultivate marijuana and sell to retailers, processors, or other producers.

“Marijuana retailer” is a licensee that may buy from producers, processors, and sell marijuana to consumers.

“Municipality” has the meaning given to it from AS 29.71.800.

“School grounds” has the meaning given to it in AS 11.71.900.

Section 28: AS 29.35 is amended to state that marijuana can be regulated by local “home rule” municipalities. There is a similar statute (AS 29.35.080) for alcohol.

Section 29: AS 43.61.010(a) is amended to focus on the excise tax. The tax is imposed on the transfer from producer or broker to retailer or processor. Every producer and broker shall pay a \$50 tax per ounce (or proportionate part of an ounce) on marijuana sold by producer or broker to a retailer or processor.

Section 30: AS 43.61.020 is amended and focuses on monthly statements and payments. The producer and broker licensees shall send a statement by mail or electronically on or before the last day of each calendar month. The statement must contain the amount of marijuana sold or transferred to other licensees. The statement shall include: (1) the total number of ounces, including fractional ounces, sold or transferred; (2) names and addresses of each buyer and transferee.

The producer and broker licensee shall pay all monthly taxes to the department. The tax shall be paid the last day of each month (to cover the preceding month).

Section 31: AS 43.61.030 focuses on administration and enforcement of the tax. Penalties for tax deficiencies will be subject to civil penalties (may include 5% added, not to exceed 25% in the aggregate). If the producer or broker fails to pay the tax, the producer or broker’s license may be revoked.

Section 32: AS 43.61 adds a new section. “Marijuana processor,” “marijuana producer,” and “marijuana retailer,” and “marijuana broker,” have the meaning found in Section 27.

Section 33: states that AS 17.38.070, AS 17.38.900(8), AS 17.38.900(10), and AS 17.38.900(13) are repealed.

Section 34: states that the act takes effect immediately under AS 01.10.070(c) (date the governor signs or the veto is overridden, or the expiration date of gubernatorial action).