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29th Alaska State Legislature



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Senate Judiciary Committee

CS for SENATE BILL 30 (*Version T*)

SECTIONAL ANALYSIS

Section 1 – PURPOSE

Page 1

States that the purpose of section 30 of this act is to protect health and safety of those residing in established villages in the unorganized borough.

Section 2 – FINDINGS

Page 2

Provides legislative findings to support section 30.

Section 3 – CONFORMING

Page 3

AS 11.41.110(a). Murder in the second degree.

Deletes reference to marijuana misconduct that has been repealed and provides stylistic drafting changes.

Section 4 – CONFORMING

Page 4

AS 11.41.150 (a). Murder of an unborn child.

Deletes reference to marijuana misconduct that has been repealed.

Section 5 – SUBSTANTIVE

Page 5

AS 11.56.375(a). Promoting contraband in the first degree.

Removes marijuana from the list of things that, if brought into a correctional facility, constitute a class C felony offense.

Section 6 – SUBSTANTIVE

Page 5

AS 11.56.380(a). Promoting contraband in the second degree.

Adds marijuana to the list of things that, if brought into a correctional facility, constitute a class A misdemeanor offense.

Section 7 – CONFORMING

Page 6

AS 11.71.030(a). Misconduct involving a controlled substance in the third degree.

Deletes reference to Schedule VIA controlled substances.

Section 8 – SUBSTANTIVE

Pages 6

AS 11.71.040(a). Misconduct involving a controlled substance in the fourth degree.

A person commits the crime of MICS 4, which is a class C felony, if they:

- Possess 16 or more ounces of useable marijuana.
- Possess 25 or more plants.
- Furnish marijuana, twice within five years, to a person under 21 years of age.

Section 9 – NON-APPLICABILITY

Page 8

AS 11.71.040. Misconduct involving a controlled substance in the fourth degree.

Certain provisions of MICS 4 are not applicable to a person who is lawfully possessing marijuana in accordance with AS 17.38.020. Similarly, a marijuana establishment registered under AS 17.38, or its employees, if acting in compliance with AS 17.38.

Section 10 – SUBSTANTIVE

Page 9

AS 11.71.050(a). Misconduct involving a controlled substance in the fifth degree.

A person commits the crime of MICS 5, which is a class A misdemeanor, if they:

- Transport or deliver more than one ounce of marijuana or more than six marijuana plants.
- Possess 3-16 ounces of marijuana or 12-24 plants.
- Deliver any amount of marijuana to a person under 21 years.
- Deliver or transport an ounce or less of marijuana or six plants or less for remuneration or barter.
- Manufacture a marijuana concentrate using a volatile or explosive gas.

Section 11 – NON-APPLICABILITY

Page 10

AS 11.71.050. Misconduct involving a controlled substance in the fifth degree.

Certain provisions of MICS 5 are not applicable to a person who is lawfully possessing, manufacturing, or delivering marijuana in accordance with AS 17.38.020. Similarly, a marijuana establishment registered under AS 17.38, or its employees, if acting in compliance with AS 17.38. An exemption is made for a person over 21 years of age delivering marijuana to the person's child or spouse who is over 18 years of age and the delivery occurs in the person's residence.

Section 12 – SUBSTANTIVE

Page 11

AS 11.71.060(a). Misconduct involving a controlled substance in the sixth degree.

A person commits the crime of MICS 6, which is a class B misdemeanor, if they:

- Possess 2-<3 ounces of marijuana.
- Possess 7-11 plants.

Section 13 – NON-APPLICABILITY

Page 11

AS 11.71.060. Misconduct involving a controlled substance in the sixth degree.

Provisions of MICS 6 are not applicable to a person who is lawfully possessing marijuana in accordance with AS 17.38.020. Similarly, a marijuana establishment registered under AS 17.38, or its employees, if acting in compliance with AS 17.38.

Section 14 – SUBSTANTIVE

Page 11

AS 11.71.071. Misconduct involving a controlled substance in the seventh degree.

A person commits the offense of MICS 7, which is a violation, if they:

- Possess 1-<2 ounces of marijuana.
- Consume marijuana in a public place.
- Grow marijuana in public view or on someone else's property without their consent.
- Use marijuana while operating a vehicle.
- As a minor, possess less than two ounces of marijuana or consume any amount of marijuana.
- **Non-applicability:** Certain provisions of MICS 7 are not applicable to a person who is lawfully possessing marijuana in accordance with AS 17.38.020. Similarly, a marijuana establishment registered under AS 17.38, or its employees, if acting in compliance with AS 17.38.
- MICS 7 is a violation punishable by a fine of \$300. A minor, if convicted of possessing or consuming marijuana, receives a fine of \$300, but the court may reduce the fine to \$50 if the defendant, within six months, completes treatment or some other juvenile diversion program.

Section 15 – CONFORMING

Page 13

AS 11.71.090(a). Affirmative defense to a prosecution under MICS 3 – MICS 7; medical use of marijuana.

Expands the affirmative defense for medical marijuana patients to include the new degree of misconduct involving controlled substance established in section 10.

Section 16 – SUBSTANTIVE

Page 13

AS 11.71.190(b). Schedule VIA.

Places hashish, hash oil, and tetrahydrocannabinols into Schedule VIA, alongside marijuana.

Section 17 – CONFORMING

Page 14

AS 11.71.311(a). Restriction on prosecution for certain persons in connection with a drug overdose.

A person may not be prosecuted for certain MICS offenses if the person seeks medical or law enforcement assistance for another person they believe is experiencing a drug overdose or significant adverse marijuana reaction and the evidence used against the person was obtained as a result of the person seeking assistance.

Section 18 – CONFORMING

Page 14

AS 11.71.900. Definitions.

Repeals the existing Title 11 definition of “marijuana” as it applied to the MICS statutes and replaces it with a definition similar to the definition found in the initiative.

Section 19 – SUBSTANTIVE

Page 15

AS 11.71.900. Definitions.

Defines “useable marijuana” to mean the seeds, leaves, buds, and flowers of the cannabis plant, hash, oil, THC, and concentrates, but does not include the stalks or roots of the plant.

Section 20 – CONFORMING

Page 15

AS 12.45.084(a). Laboratory report of controlled substances.

Expands the statutes this section applies to include the new degree of misconduct involving a controlled substance established in section 10.

Section 21 – CONFORMING

Page 15

AS 17.30.080(b). Unlawful administration, prescription, and dispensation of controlled substances.

Expands the statutes this section applies to include the new degree of misconduct involving a controlled substance established in section 10.

Section 22 – INITIATIVE

Page 15

AS 17.38.020. Personal use of marijuana.

Deletes [notwithstanding any other provision of law, except as otherwise provided in this chapter, the] and makes other stylistic changes to conform initiative language to legislative drafting standards. This section states that certain marijuana related activities are legal and not a basis for seizure or forfeiture, and prohibits use of marijuana in a public place. Nothing in this chapter permits growing marijuana as proscribed in Title 11.

Additionally provides that the definition of “assisting” does not include growing, possessing, processing, using, displaying, purchasing, or transporting marijuana and marijuana plants in excess of the amount allowed in this section.

Section 23 – INITIATIVE

Page 16

AS 17.38.070(a). Lawful operation of marijuana-related facilities.

Deletes [notwithstanding any other provision of law, the] and makes other stylistic changes to conform initiative language to legislative drafting standards. Provides that certain marijuana related acts are legal and not a basis for seizure or forfeiture when performed by a registered retail marijuana store, or a person 21 years of age or older acting in the person’s capacity as an owner, employee or agent of the store.

Section 24 – INITIATIVE

Page 17

AS 17.38.070(b). Lawful operation of marijuana related facilities.

Deletes [notwithstanding any other provision of law, the] and makes other stylistic changes to conform initiative language to legislative drafting standards. Provides that certain marijuana related acts are legal and not a basis for seizure or forfeiture when performed by a registered marijuana cultivation facility, or a person 21 years of age or older acting in the person’s capacity as an owner, employee or agent of the facility.

Section 25 – INITIATIVE

Page 17

AS 17.38.070(c). Lawful operation of marijuana related facilities.

Deletes [notwithstanding any other provision of law, the] and makes other stylistic changes to conform initiative language to legislative drafting standards. Provides that certain marijuana related acts are legal and not a basis for seizure or forfeiture when performed by a registered marijuana product manufacturing facility, or a person 21 years of age or older acting in the person's capacity as an owner, employee or agent of the facility.

Section 26 – INITIATIVE

Page 18

AS 17.38.070(d). Lawful operation of marijuana related facilities.

Deletes [notwithstanding any other provision of law, the] and makes other stylistic changes to conform initiative language to legislative drafting standards. Provides that certain marijuana related acts are legal and not a basis for seizure or forfeiture when performed by a registered marijuana testing facility, or a person 21 years of age or older acting in the person's capacity as an owner, employee or agent of the facility.

Section 27 – INITIATIVE

Page 19

AS 17.38.070(e). Lawful operation of marijuana related facilities.

Provides that it is lawful and not a basis for forfeiture or seizure for a person or business to lease or allow the use of property for marijuana related activities. Deletes [notwithstanding any other provision of law, it] and makes stylistic drafting changes.

Section 28 – SUBSTANTIVE

Page 19

AS 17.38.070. Lawful operation of marijuana related facilities.

A retail marijuana store may only sell or deliver marijuana to a person who is present at the premises of the store.

Section 29 – SUBSTANTIVE

Page 19

AS 17.38.090. Rulemaking.

Directs the marijuana control board to adopt a regulation that will prohibit a retail marijuana store from selling more than five grams of marijuana concentrate per transaction to a customer.

Section 30 – SUBSTANTIVE

Page 19

AS 17.38.110(a). Local Control.

Allows municipalities to prohibit marijuana facilities by ordinance or voter initiative. In the unorganized borough, retail marijuana stores are prohibited unless permitted through a local option election.

Section 31 – SUBSTANTIVE

Page 19

AS 17.38.120(c). Employers, driving, minors, and control of property.

“Barter” was added to clarify that it is not permitted to transfer marijuana to someone under 21 years of age, with or without exchanging money, goods, or services.

Section 32 – SUBSTANTIVE

Page 19-24

AS 17.38.200. Unlawful activity related to persons under 21 years of age.

A registered marijuana establishment, or an employee thereof, may not knowingly:

- Allow a person to give marijuana to a minor within the registered premises.
- Allow a minor to enter and remain within the registered premises.
- Allow a minor to use marijuana within the registered premises.
- While working on the registered premises, give marijuana to a minor.

Violation of this section incurs a fine of at least \$250 and less than \$500. This section does not apply to a minor who is accompanied in the marijuana establishment by a parent, guardian, or spouse who is over 21 years of age.

AS 17.38.210. Access of persons under 21 years of age to registered premises.

A person under 21 may not knowingly enter or remain on a registered marijuana premises, or misrepresent their age for the purpose of procuring marijuana. An exception is made for a minor on the premises at the request of a peace officer, a minor accompanied by a parent, guardian, or spouse who has attained 21 years of age, or is acting in the capacity of an EMS agency or fire department. Violation of this section is a \$300 fine.

AS 17.38.220. Proof of registration to be exhibited on demand; penalty.

Requires a licensee to have a copy of their marijuana license at all times when transporting more than one ounce of marijuana, and shall present the license on demand by a peace officer.

Violation of this section is a \$100 fine.

AS 17.38.230. Bail forfeiture for certain offenses.

Requires the court to make a bail schedule allowing defendants to pay the fine for violations without a court appearance for violations involving marijuana.

AS 17.38.240. Court records of violations by minors confidential.

The court may not publish on a publicly available website the court records of a minor in possession of marijuana, a minor consuming marijuana, or a minor accessing licensed premises, after the court proceedings are concluded and the case is closed.

AS 17.38.250. Local option.

If a majority of the voters approve, an established village in the unorganized borough shall permit the operation of marijuana establishments.

AS 17.38.260. Removal of local option.

An established village shall remove a local option if a majority of the voters approve. The option is repealed effective the first day of the month following certification of the election results.

AS 17.38.270. Effect of local option on registrations of prohibition of marijuana establishments.

If a local option is removed, the board may not issue, renew, or transfer a registration for a marijuana establishment located within the perimeter of the village.

AS 17.38.280. Procedure for local option elections.

An election to adopt or remove a local option shall be conducted as follows:

- The lieutenant governor shall place on a separate ballot at a special election the content from a petition that received at least 35 percent of registered voters within the village.
- The election may not be conducted during the first 24 months after the local option was adopted or more than once in a 36-month period.
- Another petition may not be filed until after the question presented in the first petition has been voted on. Only one local option question may be presented in an election.

AS 17.38.290. Establishment of perimeter of established village.

For purposes of the local option law, the perimeter of a village is a circle around the village that includes an area within a five-mile radius of the post office of the village, or a five-mile radius of another site selected by the local governing body, or the board, if the village doesn't have a local governing body. If the perimeter overlaps with another village's perimeter, and that other village has not adopted a local option, then the local option does not apply in the overlapping area.

AS 17.38.300. Notice of the results of a local option election.

If a majority of the voters approve or remove a local option, the lieutenant governor shall notify the board of the results immediately following the election, and the board shall immediately notify the Department of Law and the Department of Public Safety.

AS 17.38.310. Peace officer powers.

Authorizes the board and its employees to enforce provisions of Title 11 and Title 17 relating to marijuana.

Section 33 – INITIATIVE

Page 24

AS 17.38.900(6). Definitions.

Establishes the definition for “marijuana” as defined in the ballot initiative.

Section 34 – INITIATIVE/SUBSTANTIVE

Page 24

AS 17.38.900. Definitions.

Defines “deliver”, “established village”, “knowingly”, “manufacture”, “marijuana concentrate”, “public place” and “useable marijuana.”

Section 35 – SUBSTANTIVE

Page 25

AS 28.35.029(a). Open container.

Provides that a person may not drive a motor vehicle when there is an open marijuana container in the passenger compartment with the exceptions provided below (b.)

Section 36 – SUBSTANTIVE

Page 25

AS 28.35.029(b). Open container.

Creates exceptions to an open marijuana container being in the vehicle: the container is in the trunk of the vehicle; behind the last upright seat in certain vehicles; behind a solid partition that separates the driver from the passengers, or certain types of passenger vehicles.

Section 37 – SUBSTANTIVE

Page 25

AS 28.35.029(c). Open container.

Defines “open marijuana container” as a receptacle that contains marijuana, is open or has a broken seal, and any amount of marijuana is removed while in the vehicle.

Section 38 – CONFORMING

Page 25

AS 34.03.360(7). Definitions.

Defines “illegal activity involving a controlled substance” to include MICS crimes relating to marijuana.

Section 39 – CONFORMING

Page 26

AS 47.12.030(b). Provisions inapplicable.

When a minor is accused of a violating a statute relating to possessing or consuming marijuana, or accessing marijuana establishments, other than a felony, the Alaska Delinquency Rules do not apply and the minor accused of the offense shall be charged, prosecuted, and sentenced in the same manner as an adult. The minor's parent or guardian shall be present at all proceedings.

Section 40 – SUBSTANTIVE

Page 27

Repeals the enumerated statutes.

Section 41 – SUBSTANTIVE

Page 27

Applicability provisions.

Section 42 – SUBSTANTIVE

Page 27

Establishes an immediate effective date.