

29-LS0345\R
Martin
4/14/15

SENATE CS FOR CS FOR HOUSE BILL NO. 75(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the registration of marijuana establishments by municipalities;
2 relating to the definition of 'marijuana'; clarifying standards for personal use of
3 marijuana by persons 21 years of age or older; prohibiting the public consumption of
4 marijuana; authorizing the registration of marijuana clubs; 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 11.71.900(14) is amended to read:

9 (14) "marijuana" means all parts [THE SEEDS, AND LEAVES,
10 BUDS, AND FLOWERS] of the plant (genus) Cannabis, whether growing or not, the
11 seeds thereof, [; IT DOES NOT INCLUDE] the resin [OR OIL] extracted from any
12 part of the plant, and [PLANTS, OR] any compound, manufacture, [SALT,]
13 derivative, mixture, or preparation of the plant, its seeds, or its resin, including

1 **marijuana concentrate; "marijuana"** [FROM THE RESIN OR OIL, INCLUDING
 2 HASHISH, HASHISH OIL, AND NATURAL OR SYNTHETIC
 3 TETRAHYDROCANNABINOL; IT] does not include [THE STALKS OF THE
 4 PLANT,] fiber produced from the stalks, oil or cake made from the seeds of the plant,
 5 [ANY OTHER COMPOUND, MANUFACTURE, SALT, DERIVATIVE,
 6 MIXTURE, OR PREPARATION OF THE STALKS, FIBER, OIL OR CAKE, OR
 7 THE] sterilized seed of the plant **that** [WHICH] is incapable of germination, **or the**
 8 **weight of any other ingredient combined with marijuana to prepare topical or**
 9 **oral administrations, food, drink, or other products;**

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

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

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

18 (2) possessing, growing, processing, or transporting **not** [NO] more
 19 than six marijuana plants, with three or fewer being mature, flowering plants, and
 20 possession of the marijuana produced by the plants on the premises where the plants
 21 were grown, **except that not more than 24 marijuana plants, with 12 or fewer**
 22 **being mature, flowering plants, may be present in a single dwelling regardless of**
 23 **the number of persons 21 years of age or older residing in the dwelling;**

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

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

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

30 * **Sec. 3.** AS 17.38.020 is amended by adding new subsections to read:

31 (b) In this section, assisting is limited to the quantities described in (a) of this

1 section and does not include

2 (1) using, displaying, purchasing, or transporting marijuana in excess
3 of the amount allowed in this section;

4 (2) possessing, growing, processing, or transporting marijuana plants
5 in excess of the amount allowed in this section; or

6 (3) growing marijuana plants for another person in a place other than
7 that other person's dwelling.

8 (c) Notwithstanding (a)(2) of this section, a municipality may, by ordinance,
9 limit the number of marijuana plants that may be present in a single dwelling to fewer
10 than 24 marijuana plants.

11 * **Sec. 4.** AS 17.38.040 is amended to read:

12 **Sec. 17.38.040. Public consumption banned, penalty.** It is unlawful to
13 consume marijuana in a public place. A person who violates this section is guilty of a
14 violation punishable by a fine of up to \$100.

15 * **Sec. 5.** AS 17.38.070(f) is amended to read:

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

19 * **Sec. 6.** AS 17.38.100(c) is amended to read:

20 (c) Within five days after receipt of [UPON RECEIVING] an application or
21 renewal application for a marijuana establishment, the board shall notify the
22 municipality of the board's receipt of the application and electronically
23 [IMMEDIATELY] forward a copy of each application and half of the registration
24 application fee to the local regulatory authority for the municipality [LOCAL
25 GOVERNMENT] in which the applicant desires to operate the marijuana
26 establishment, unless the municipality [LOCAL GOVERNMENT] has not designated
27 a local regulatory authority under [PURSUANT TO] AS 17.38.110(c).

28 * **Sec. 7.** AS 17.38.100(d) is amended to read:

29 (d) Within [45 TO] 90 days after receiving an application or renewal
30 application, the board shall issue an annual registration to the applicant unless the
31 board finds the applicant is not in compliance with regulations adopted under

1 [ENACTED PURSUANT TO] AS 17.38.090 or the board **receives a protest from a**
 2 **municipality under AS 17.38.105** [IS NOTIFIED BY THE RELEVANT LOCAL
 3 GOVERNMENT THAT THE APPLICANT IS NOT IN COMPLIANCE WITH
 4 ORDINANCES AND REGULATIONS MADE PURSUANT TO AS 17.38.110 AND
 5 IN EFFECT AT THE TIME OF APPLICATION].

6 * **Sec. 8.** AS 17.38.100(e) is amended to read:

7 (e) If a **municipality** [LOCAL GOVERNMENT] has enacted a numerical
 8 limit on the number of marijuana establishments and a greater number of applicants
 9 seek registrations, the board shall solicit and consider input **received from a**
 10 **municipality under AS 17.38.105** [FROM THE LOCAL REGULATORY
 11 AUTHORITY AS TO THE LOCAL GOVERNMENT'S PREFERENCE OR
 12 PREFERENCES FOR REGISTRATION].

13 * **Sec. 9.** AS 17.38 is amended by adding a new section to read:

14 **Sec. 17.38.105. Protest and review of registration or renewal.** (a) A
 15 municipality may protest the issuance or renewal of a registration by sending the board
 16 and the applicant a protest and the reasons for the protest within 60 days after receipt
 17 by the municipality from the board of notice of the filing of the application. The board
 18 may not accept a protest received after the 60-day period, and, in no event, may a
 19 protest cause the board to reconsider an approved renewal of a registration. The board
 20 shall consider a protest and testimony received at a hearing conducted under (d)(1) or
 21 (2) of this section when it considers the application or continued operation, and the
 22 protest and the record of the hearing conducted under (d)(1) or (2) of this section shall
 23 be kept as part of the board's permanent record of its review. If an application or
 24 continued operation is protested, the board shall deny the application or continued
 25 operation unless the board finds that the protest is arbitrary, capricious, or
 26 unreasonable.

27 (b) A municipality may recommend that a registration be issued or renewed
 28 with conditions. The board shall consider recommended conditions and testimony
 29 received at a hearing conducted under (d)(1) or (2) of this section when it considers
 30 the application or continued operation. The recommended conditions and the record of
 31 the hearing conducted under (d)(1) or (2) of this section shall be kept as part of the

1 board's permanent record of its review. If the municipality recommends conditions,
2 the board shall impose the recommended conditions unless the board finds that the
3 recommended conditions are arbitrary, capricious, or unreasonable. If a condition
4 recommended by a municipality is imposed on a registrant, the municipality shall
5 assume responsibility for monitoring compliance with the condition, except as
6 otherwise provided by the board.

7 (c) In addition to the right to protest under (a) of this section, a municipality
8 may notify the board that the municipality has determined that a registrant has violated
9 a provision of this chapter or a condition imposed on the registrant by the board.
10 Unless the board finds that the municipality's determination is arbitrary, capricious, or
11 unreasonable, the board shall prepare the determination as an accusation against the
12 registrant under AS 44.62.360 and conduct proceedings to resolve the matter.

13 (d) The board

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

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

18 (3) shall send notice of a hearing conducted under this subsection 10
19 days before the hearing to each community council established within the municipality
20 and to each nonprofit community organization entitled to notification under
21 AS 17.38.100(c).

22 * **Sec. 10.** AS 17.38.110(a) is amended to read:

23 (a) A **municipality** [LOCAL GOVERNMENT] may prohibit the operation of
24 marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana
25 testing facilities, [OR] retail marijuana stores, **or marijuana clubs** through the
26 enactment of an ordinance or by a voter initiative. **An established village may**
27 **prohibit the operation of marijuana establishments by a voter initiative as**
28 **provided in AS 17.38.200.**

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

30 (b) A **municipality** [LOCAL GOVERNMENT] may **adopt** [ENACT]
31 ordinances or regulations not in conflict with this chapter or with regulations **adopted**

1 **under** [ENACTED PURSUANT TO] this chapter, governing the time, place, manner,
 2 and number of marijuana establishment operations. A **municipality with power to**
 3 **establish civil and criminal penalties** [LOCAL GOVERNMENT] may establish civil
 4 **and criminal** penalties for violation of an ordinance or regulation governing the time,
 5 place, and manner of a marijuana establishment that may operate in **the municipality**
 6 [SUCH LOCAL GOVERNMENT].

7 * **Sec. 12.** AS 17.38.110(c) is amended to read:

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

17 * **Sec. 13.** AS 17.38.110(d) is amended to read:

18 (d) A **municipality** [LOCAL GOVERNMENT] may establish procedures for
 19 the issuance, suspension, and revocation of a registration issued by the **municipality**
 20 [LOCAL GOVERNMENT] in accordance with (f) [OF THIS SECTION] or (g) of this
 21 section. These procedures shall be **consistent with the** [SUBJECT TO ALL]
 22 requirements of AS 44.62 (Administrative Procedure Act).

23 * **Sec. 14.** AS 17.38.110(e) is amended to read:

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

31 * **Sec. 15.** AS 17.38.110(h) is amended to read:

1 (h) A local regulatory authority issuing a registration to an applicant shall do
2 so within 90 days after [OF] receipt of the submitted or resubmitted application unless
3 the local regulatory authority finds and notifies the applicant that the applicant is not
4 in compliance with ordinances and regulations adopted under [MADE PURSUANT
5 TO] (b) of this section in effect at the time the application is submitted to the local
6 regulatory authority. The municipality [LOCAL GOVERNMENT] shall notify the
7 board if an annual registration has been issued to the applicant.

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

9 (i) A registration issued by a municipality [LOCAL GOVERNMENT] in
10 accordance with (f) [OF THIS SECTION] or (g) of this section shall have the same
11 force and effect as a registration issued by the board in accordance with AS 17.38.100.
12 The holder of the [SUCH] registration is [SHALL NOT BE] subject to state
13 regulation or enforcement [BY THE BOARD] during the term of that registration.

14 * **Sec. 17.** AS 17.38.110(j) is amended to read:

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

19 * **Sec. 18.** AS 17.38.110(l) is amended to read:

20 (l) Nothing in this section limits the [SHALL LIMIT SUCH] relief [AS MAY
21 BE] available to an aggrieved party under AS 44.62 (Administrative Procedure Act)
22 or an ordinance consistent with AS 44.62.

23 * **Sec. 19.** AS 17.38.110 is amended by adding new subsections to read:

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

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

the borough.

* **Sec. 20.** AS 17.38 is amended by adding new sections to read:

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

(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 prohibit the operation of marijuana establishments? (yes or no)."

Sec. 17.38.210. 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 17.38.200. 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 prohibits the operation of marijuana establishments, so that there is no longer any local option in effect? (yes or no)."

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

Sec. 17.38.220. Effect on registrations of prohibition of marijuana establishments. If a majority of voters vote to prohibit the operation of marijuana establishments under AS 17.38.200, 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 17.38.200 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. 17.38.230. Prohibition of sale and manufacture after election. (a) If a

1 majority of the voters vote to prohibit the operation of marijuana establishments under
2 AS 17.38.200, a person may not knowingly sell or manufacture marijuana in the
3 established village.

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

7 (c) Nothing in this section prohibits the personal use of marijuana authorized
8 under AS 17.38.020.

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

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

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

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

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

26 **Sec. 17.38.250. Establishment of perimeter of established village.** (a)
27 Except as provided under (b) and (c) of this section, for purposes of AS 17.38.200 and
28 17.38.220, the perimeter of an established village is a circle around the established
29 village that includes an area within a five-mile radius of the post office of the
30 established village. If the established village does not have a post office, the perimeter
31 of an established village is a circle around the established village that includes an area

1 within a five-mile radius of another site selected by the local governing body or by the
2 board if the established village does not have a local governing body.

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

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

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

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

15 **Sec. 17.38.260. Notice of the results of a local option election.** If a majority
16 of the voters vote to prohibit or remove a local option under AS 17.38.200 or
17 17.38.210, the lieutenant governor shall notify the board of the results of the election
18 immediately after the results are certified. The board shall immediately notify the
19 Department of Law and the Department of Public Safety of the results of the election.

20 **Sec. 17.38.265. Bail forfeiture for certain offenses.** The supreme court shall
21 establish by rule or order a schedule of bail amounts that may be forfeited without
22 court appearance for a violation of AS 17.38.030 - 17.38.050.

23 * **Sec. 21.** AS 17.38.900(5) is amended to read:

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

27 * **Sec. 22.** AS 17.38.900(6) is amended to read:

28 (6) "marijuana" means all parts of the plant of the genus cannabis
29 whether growing or not, the seeds thereof, the resin extracted from any part of the
30 plant, and every compound, manufacture, [SALT,] derivative, mixture, or preparation
31 of the plant, its seeds, or its resin, including marijuana concentrate; "marijuana" does

1 not include fiber produced from the stalks, oil [,] or cake made from the seeds of the
2 plant, 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 oral
4 administrations, food, drink, or other products;

5 * **Sec. 23.** AS 17.38.900(9) is amended to read:

6 (9) "marijuana establishment" means a marijuana cultivation facility, a
7 marijuana testing facility, a marijuana product manufacturing facility, [OR] a retail
8 marijuana store, or a marijuana club;

9 * **Sec. 24.** AS 17.38.900 is amended by adding new paragraphs to read:

10 (15) "dwelling" has the meaning given in AS 11.81.900;

11 (16) "established village" means an area that does not contain any part
12 of an incorporated city or another established village and that is an unincorporated
13 community that is in the unorganized borough and that has 25 or more permanent
14 residents;

15 (17) "manufacture" has the meaning given in AS 11.71.900;

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

19 (19) "public place" means a place to which the public or a substantial
20 group of persons has access and includes but is not limited to highways, transportation
21 facilities, schools, places of amusement or business, parks, playgrounds, prisons, and
22 hallways, lobbies, and other portions of apartment houses and hotels not constituting
23 rooms or apartments designed for actual residence; "public place" does not include a
24 marijuana club.

25 * **Sec. 25.** AS 17.38.900(4) is repealed.

26 * **Sec. 26.** This Act takes effect immediately under AS 01.10.070(c).