

LEGAL SERVICES

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MEMORANDUM

April 4, 2016

SUBJECT: Marijuana control board
(SCS CSHB 123(FIN); Work Order No. 29-GH1110\Y)

TO: Representative Gabrielle LeDoux
Attn: Amy Michel

FROM: Linda M. Bruce *Linda Bruce*
Legislative Counsel

You have requested a legal opinion regarding the statutory obligations of the Marijuana Control Board ("board") with respect to barrier crimes for registration or licensure. Under current law, there is no fingerprint requirement for registration or licensure as a marijuana establishment nor is there a requirement that the board do an FBI, or similar, criminal background check. AS 17.38.100 mandates that a marijuana establishment may not be registered or licensed for an applicant who has been convicted of a felony in the last five years or who is currently on probation or parole for a felony, but the statute is not specific on how the board is to implement this requirement. Therefore, you have asked whether AS 17.38.100 requires the board to do a criminal background check or whether the board may meet its statutory obligation in another way, such as by requiring applicants to provide the required information on their applications under penalty of perjury.

Under current law, there is nothing that requires or authorizes the board to perform national background checks for applicants. Without express statutory authorization, the board may not access the national database maintained by the FBI. Therefore, under AS 17.38.100, all that the board may legally do to verify these requirements is to require that an applicant provide information on his or her application. The board will likely not be able to verify whether the information provided on an application is correct without a national background check. The board may access the Alaska Public Safety Information Network (APSIN) database, but that would only result in information on convictions that have occurred in Alaska. However, if an applicant provides false information on an application then the applicant may forfeit by revocation or agreement his or her registration or licensure and could face criminal penalties for perjury. While there is no case law on this specific topic in Alaska, it is likely that this method will be sufficient to meet the requirements of the statute.

If I may be of further assistance, please advise.

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