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Martin
3/23/15

CS FOR HOUSE BILL NO. 75()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY

**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; assisting under
30 this paragraph does not include

31 (A) using, displaying, purchasing, or transporting

1 marijuana in excess of the amount allowed in this section;

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

4 (C) growing marijuana plants for another person in a place
5 other than that other person's dwelling.

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

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

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

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

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

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

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

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

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

1 **Sec. 17.38.105. Protest and review of registration or renewal.** (a) A
2 municipality may protest the issuance or renewal of a registration by sending the board
3 and the applicant a protest and the reasons for the protest within 60 days after receipt
4 by the municipality from the board of notice of the filing of the application. The board
5 may not accept a protest received after the 60-day period, and, in no event, may a
6 protest cause the board to reconsider an approved renewal of a registration. The board
7 shall consider a protest and testimony received at a hearing conducted under (e)(1) or
8 (2) of this section when it considers the application or continued operation, and the
9 protest and the record of the hearing conducted under (e)(1) or (2) of this section shall
10 be kept as part of the board's permanent record of its review. If an application or
11 continued operation is protested, the board shall deny the application or continued
12 operation unless the board finds that the protest is arbitrary, capricious, and
13 unreasonable.

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

23 (c) A municipality may recommend that a registration be issued or renewed
24 with conditions. The board shall consider recommended conditions and testimony
25 received at a hearing conducted under (e)(1) or (2) of this section when it considers the
26 application or continued operation. The recommended conditions and the record of the
27 hearing conducted under (e)(1) or (2) of this section shall be kept as part of the board's
28 permanent record of its review. If the municipality recommends conditions, the board
29 shall impose the recommended conditions unless the board finds that the
30 recommended conditions are arbitrary, capricious, or unreasonable. If a condition
31 recommended by a municipality is imposed on a registrant, the municipality shall

1 assume responsibility for monitoring compliance with the condition, except as
2 otherwise provided by the board.

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

9 (e) The board

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

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

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

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

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

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

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

31 (b) A municipality [LOCAL GOVERNMENT] may adopt [ENACT]

1 ordinances or regulations not in conflict with this chapter or with regulations **adopted**
2 **under** [ENACTED PURSUANT TO] this chapter, governing the time, place, manner,
3 and number of marijuana establishment operations. A **municipality** [LOCAL
4 GOVERNMENT] may establish civil **and criminal** penalties for violation of an
5 ordinance or regulation governing the time, place, and manner of a marijuana
6 establishment that may operate in **the municipality** [SUCH LOCAL
7 GOVERNMENT].

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

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

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

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

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

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

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

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

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

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

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

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

20 * **Sec. 16.** AS 17.38.110(l) is amended to read:

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

24 * **Sec. 17.** AS 17.38.110 is amended by adding new subsections to read:

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

30 (n) Except as provided in AS 29, the exercise of the powers authorized by this
31 section by a borough may be exercised only on a nonareawide basis. In this

1 subsection, "nonareawide" means throughout the area of a borough outside all cities in
2 the borough.

3 * **Sec. 18.** AS 17.38 is amended by adding new sections to read:

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

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

10 **Sec. 17.38.210. Removal of local option.** (a) If a majority of the voters voting
11 on the question vote to remove the option, an established village shall remove a local
12 option previously adopted under AS 17.38.200. The option is repealed effective the
13 first day of the month following certification of the results of the election.

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

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

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

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

5 (b) If there are registered establishments within the established village, the
6 prohibition on sale, purchase, and manufacture is effective beginning 90 days after the
7 results of the election are certified. If there are no registered establishments within the
8 established village, the prohibition on possession is effective beginning 60 days after
9 the results of the election are certified.

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

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

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

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

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

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

1 of an established village is a circle around the established village that includes an area
2 within a five-mile radius of another site selected by the local governing body or by the
3 board if the established village does not have a local governing body.

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

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

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

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

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

21 * **Sec. 19.** AS 17.38.900(5) is amended to read:

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

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

26 (6) "marijuana" means all parts of the plant of the genus cannabis
27 whether growing or not, the seeds thereof, the resin extracted from any part of the
28 plant, and every compound, manufacture, [SALT,] derivative, mixture, or preparation
29 of the plant, its seeds, or its resin, including marijuana concentrate; "marijuana" does
30 not include fiber produced from the stalks, oil, or cake made from the seeds of the
31 plant, sterilized seed of the plant that [WHICH] is incapable of germination, or the

1 weight of any other ingredient combined with marijuana to prepare topical or oral
2 administrations, food, drink, or other products;

3 * **Sec. 21.** AS 17.38.900(9) is amended to read:

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

7 * **Sec. 22.** AS 17.38.900 is amended by adding new paragraphs to read:

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

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

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

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

22 * **Sec. 23.** AS 17.38.100(d), 17.38.100(e), and 17.38.900(4) are repealed.

23 * **Sec. 24.** This Act takes effect immediately under AS 01.10.070(c).