

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered: 4/15/15

Referred: Judiciary

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; and providing for an**
5 **effective date."**

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 *** Section 1.** AS 11.71.900(14) is amended to read:

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

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

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

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

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

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

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

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

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

29 * **Sec. 3.** AS 17.38.020 is amended by adding a new subsection to read:

30 (b) In this section, assisting is limited to the quantities described in (a) of this
 31 section and does not include

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

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

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

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

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

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

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

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

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

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

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

1 * **Sec. 8.** AS 17.38 is amended by adding a new section to read:

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

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

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

1 recommended by a municipality is imposed on a registrant, the municipality shall
 2 assume responsibility for monitoring compliance with the condition, except as
 3 otherwise provided by the board.

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

10 (e) The board

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

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

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

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

24 * **Sec. 9.** AS 17.38.110(a) is amended to read:

25 (a) A municipality [LOCAL GOVERNMENT] may prohibit the operation of
 26 marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana
 27 testing facilities, [OR] retail marijuana stores, or marijuana clubs through the
 28 enactment of an ordinance or by a voter initiative.

29 * **Sec. 10.** 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. 11.** 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. 12.** 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. 13.** 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. 14.** 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. 15.** 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. 16.** 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. 17.** 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. 18.** 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

1 the borough.

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

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

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

7 (6) "marijuana" means all parts of the plant of the genus cannabis
8 whether growing or not, the seeds thereof, the resin extracted from any part of the
9 plant, and every compound, manufacture, [SALT,] derivative, mixture, or preparation
10 of the plant, its seeds, or its resin, including marijuana concentrate; "marijuana" does
11 not include fiber produced from the stalks, oil, or cake made from the seeds of the
12 plant, sterilized seed of the plant **that** [WHICH] is incapable of germination, or the
13 weight of any other ingredient combined with marijuana to prepare topical or oral
14 administrations, food, drink, or other products;

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

16 (9) "marijuana establishment" means a marijuana cultivation facility, a
17 marijuana testing facility, a marijuana product manufacturing facility, [OR] a retail
18 marijuana store, **or a marijuana club**;

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

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

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

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

28 (18) "public place" means a place to which the public or a substantial
29 group of persons has access and includes but is not limited to highways, transportation
30 facilities, schools, places of amusement or business, parks, playgrounds, prisons, and
31 hallways, lobbies, and other portions of apartment houses and hotels not constituting

1 rooms or apartments designed for actual residence; "public place" does not include a
2 marijuana club.

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

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