

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered: 3/6/15

Referred: Judiciary

Sponsor(s): HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the regulation of marijuana by municipalities; relating to  
2 marijuana; and providing for an effective date."

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

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

5 (14) "marijuana" means **all parts** [THE SEEDS, AND LEAVES,  
6 BUDS, AND FLOWERS] of the plant (genus) Cannabis, whether growing or not, **the**  
7 **seeds thereof,** [; IT DOES NOT INCLUDE] the resin [OR OIL] extracted from any  
8 part of the **plant, and** [PLANTS, OR] any compound, manufacture, [SALT,]  
9 derivative, mixture, or preparation **of the plant, its seeds, or its resin, including**  
10 **marijuana concentrate; "marijuana"** [FROM THE RESIN OR OIL, INCLUDING  
11 HASHISH, HASHISH OIL, AND NATURAL OR SYNTHETIC  
12 TETRAHYDROCANNABINOL; IT] does not include [THE STALKS OF THE  
13 PLANT,] fiber produced from the stalks, oil or cake made from the seeds of the plant,  
14 [ANY OTHER COMPOUND, MANUFACTURE, SALT, DERIVATIVE,

1 MIXTURE, OR PREPARATION OF THE STALKS, FIBER, OIL OR CAKE, OR  
 2 THE] 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  
 4 oral administrations, food, drink, or other products;

5 \* **Sec. 2.** AS 17.38.020 is amended to read:

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

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

13 (2) possessing, growing, processing, or transporting **not** [NO] more  
 14 than six marijuana plants, with three or fewer being mature, flowering plants, and  
 15 possession of the marijuana produced by the plants on the premises where the plants  
 16 were grown, **except that not more than 12 marijuana plants, with six or fewer**  
 17 **being mature, flowering plants, may be present in a single residence where two or**  
 18 **more persons 21 years of age or older reside;**

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

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

23 (5) assisting, **aiding, or supporting** another person who is 21 years of  
 24 age or older in any of the acts described in (1) - (4) of this section; **assisting under**  
 25 **this paragraph does not include**

26 **(A) using, displaying, purchasing, or transporting**  
 27 **marijuana in excess of the amount allowed in this section;**

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

30 **(C) growing marijuana plants for another person in a place**  
 31 **other than that other person's residence.**

1 \* **Sec. 3.** AS 17.38.040 is amended to read:

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

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

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

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

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

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

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

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

27           **Sec. 17.38.105. Protest and review of registration or renewal.** (a) A  
28 municipality may protest the issuance or renewal of a registration by sending the board  
29 and the applicant a protest and the reasons for the protest within 60 days after receipt  
30 by the municipality from the board of notice of the filing of the application. The board  
31 may not accept a protest received after the 60-day period, and, in no event, may a

1 protest cause the board to reconsider an approved renewal of a registration. The board  
2 shall consider a protest and testimony received at a hearing conducted under (e)(1) or  
3 (2) of this section when it considers the application or continued operation, and the  
4 protest and the record of the hearing conducted under (e)(1) or (2) of this section shall  
5 be kept as part of the board's permanent record of its review. If an application or  
6 continued operation is protested, the board shall deny the application or continued  
7 operation unless the board finds that the protest is arbitrary, capricious, and  
8 unreasonable.

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

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

29 (d) In addition to the right to protest under (a) of this section, a municipality  
30 may notify the board that the municipality has determined that a registrant has violated  
31 a provision of this chapter or a condition imposed on the registrant by the board.

1 Unless the board finds that the municipality's determination is arbitrary, capricious, or  
 2 unreasonable, the board shall prepare the determination as an accusation against the  
 3 registrant under AS 44.62.360 and conduct proceedings to resolve the matter.

4 (e) The board

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

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

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

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

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

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

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

26 (b) A **municipality** [LOCAL GOVERNMENT] may **adopt** [ENACT]  
 27 ordinances or regulations not in conflict with this chapter or with regulations **adopted**  
 28 **under** [ENACTED PURSUANT TO] this chapter, governing the time, place, manner,  
 29 and number of marijuana establishment operations. A **municipality** [LOCAL  
 30 GOVERNMENT] may establish civil **and criminal** penalties for violation of an  
 31 ordinance or regulation governing the time, place, and manner of a marijuana

1 establishment that may operate in the municipality [SUCH LOCAL  
2 GOVERNMENT].

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

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

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

14 (d) A municipality [LOCAL GOVERNMENT] may establish procedures for  
15 the issuance, suspension, and revocation of a registration issued by the municipality  
16 [LOCAL GOVERNMENT] in accordance with (f) [OF THIS SECTION] or (g) of this  
17 section. These procedures shall be subject to all requirements of AS 44.62  
18 (Administrative Procedure Act).

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

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

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

28 (h) A local regulatory authority issuing a registration to an applicant shall do  
29 so within 90 days after [OF] receipt of the submitted or resubmitted application unless  
30 the local regulatory authority finds and notifies the applicant that the applicant is not  
31 in compliance with ordinances and regulations adopted under [MADE PURSUANT

1 TO] (b) of this section in effect at the time the application is submitted to the local  
 2 regulatory authority. The municipality [LOCAL GOVERNMENT] shall notify the  
 3 board if an annual registration has been issued to the applicant.

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

5 (i) A registration issued by a municipality [LOCAL GOVERNMENT] in  
 6 accordance with (f) [OF THIS SECTION] or (g) of this section shall have the same  
 7 force and effect as a registration issued by the board in accordance with AS 17.38.100.  
 8 The holder of the [SUCH] registration is [SHALL] not [BE] subject to regulation or  
 9 enforcement by the board during the term of that registration.

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

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

15 \* **Sec. 16.** AS 17.38.110 is amended by adding new subsections to read:

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

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

25 \* **Sec. 17.** AS 17.38 is amended by adding new sections to read:

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

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

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

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

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

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

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

27           (b) If there are registered establishments within the established village, the  
 28 prohibition on sale, purchase, and manufacture is effective beginning 90 days after the  
 29 results of the election are certified. If there are no registered establishments within the  
 30 established village, the prohibition on possession is effective beginning 60 days after  
 31 the results of the election are certified.

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

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

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

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

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

18 **Sec. 17.38.250. Establishment of perimeter of established village.** (a)  
19 Except as provided under (b) and (c) of this section, for purposes of AS 17.38.200 and  
20 17.38.220, the perimeter of an established village is a circle around the established  
21 village that includes an area within a five-mile radius of the post office of the  
22 established village. If the established village does not have a post office, the perimeter  
23 of an established village is a circle around the established village that includes an area  
24 within a five-mile radius of another site selected by the local governing body or by the  
25 board if the established village does not have a local governing body.

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

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

31 (2) not adopted a local option under AS 17.38.200, the local option

1 does not apply in the overlapping area.

2 (c) If the board determines that the perimeter of an established village as  
3 provided under (a) and (b) of this section does not accurately reflect the perimeter of  
4 the established village, the board may establish the perimeter of the established village  
5 and the areas of overlapping perimeter described under (b) of this section for purposes  
6 of applying a local option selected under this chapter.

7 **Sec. 17.38.260. Notice of the results of a local option election.** If a majority  
8 of the voters vote to prohibit or remove a local option under AS 17.38.200 or  
9 17.38.210, the lieutenant governor shall notify the board of the results of the election  
10 immediately after the results are certified. The board shall immediately notify the  
11 Department of Law and the Department of Public Safety of the results of the election.

12 \* **Sec. 18.** AS 17.38.900(5) is amended to read:

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

16 \* **Sec. 19.** AS 17.38.900(9) is amended to read:

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

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

21 (6) "marijuana" means all parts of the plant of the genus cannabis  
22 whether growing or not, the seeds thereof, the resin extracted from any part of the  
23 plant, and every compound, manufacture, [SALT,] derivative, mixture, or preparation  
24 of the plant, its seeds, or its resin, including marijuana concentrate; "marijuana" does  
25 not include fiber produced from the stalks, oil, or cake made from the seeds of the  
26 plant, sterilized seed of the plant that [WHICH] is incapable of germination, or the  
27 weight of any other ingredient combined with marijuana to prepare topical or oral  
28 administrations, food, drink, or other products;

29 \* **Sec. 21.** AS 17.38.900 is amended by adding new paragraphs to read:

30 (15) "established village" means an area that does not contain any part  
31 of an incorporated city or another established village and that is an unincorporated

1 community that is in the unorganized borough and that has 25 or more permanent  
2 residents;

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

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

12 (18) "residence" means a single dwelling unit.

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

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