

HOUSE BILL NO. 79

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced: 1/26/15

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to controlled substances; relating to marijuana; relating to driving**
2 **motor vehicles when there is an open marijuana container; and providing for an**
3 **effective date."**

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

5 * **Section 1.** AS 11.71.040(a) is amended to read:

6 (a) Except as authorized in AS 17.30, a person commits the crime of
7 misconduct involving a controlled substance in the fourth degree if the person

8 (1) manufactures or delivers any amount of a schedule IVA or VA
9 controlled substance or possesses any amount of a schedule IVA or VA controlled
10 substance with intent to manufacture or deliver;

11 (2) manufactures or delivers, or possesses with the intent to
12 manufacture or deliver, one or more preparations, compounds, mixtures, or substances
13 of an aggregate weight of more than one ounce [OR MORE] containing a schedule
14 VIA controlled substance;

1 (3) possesses

2 (A) any amount of a

3 (i) schedule IA controlled substance; or

4 (ii) IIA controlled substance except a controlled
5 substance listed in AS 11.71.150(e)(11) - (15);

6 (B) 25 or more tablets, ampules, or syrettes containing a
7 schedule IIIA or IVA controlled substance;

8 (C) one or more preparations, compounds, mixtures, or
9 substances of an aggregate weight of

10 (i) three grams or more containing a schedule IIIA or
11 IVA controlled substance except a controlled substance in a form listed
12 in (ii) of this subparagraph;

13 (ii) 12 grams or more containing a schedule IIIA
14 controlled substance listed in AS 11.71.160(f)(7) - (16) that has been
15 sprayed on or otherwise applied to tobacco, an herb, or another organic
16 material; or

17 (iii) 500 milligrams or more of a schedule IIA
18 controlled substance listed in AS 11.71.150(e)(11) - (15);

19 (D) 50 or more tablets, ampules, or syrettes containing a
20 schedule VA controlled substance;

21 (E) one or more preparations, compounds, mixtures, or
22 substances of an aggregate weight of six grams or more containing a schedule
23 VA controlled substance;

24 (F) one or more preparations, compounds, mixtures, or
25 substances of an aggregate weight of four ounces or more containing a
26 schedule VIA controlled substance;

27 (G) 25 or more plants of the genus cannabis;

28 (4) possesses a schedule IIIA, IVA, VA, or VIA controlled substance

29 (A) with reckless disregard that the possession occurs

30 (i) on or within 500 feet of school grounds; or

31 (ii) at or within 500 feet of a recreation or youth center;

1 or

2 (B) on a school bus;

3 (5) knowingly keeps or maintains any store, shop, warehouse,
4 dwelling, building, vehicle, boat, aircraft, or other structure or place that is used for
5 keeping or distributing controlled substances in violation of a felony offense under this
6 chapter or AS 17.30;

7 (6) makes, delivers, or possesses a punch, die, plate, stone, or other
8 thing that prints, imprints, or reproduces a trademark, trade name, or other identifying
9 mark, imprint, or device of another or any likeness of any of these upon a drug, drug
10 container, or labeling so as to render the drug a counterfeit substance;

11 (7) knowingly uses in the course of the manufacture or distribution of a
12 controlled substance a registration number that is fictitious, revoked, suspended, or
13 issued to another person;

14 (8) knowingly furnishes false or fraudulent information in or omits
15 material information from any application, report, record, or other document required
16 to be kept or filed under AS 17.30;

17 (9) obtains possession of a controlled substance by misrepresentation,
18 fraud, forgery, deception, or subterfuge; or

19 (10) affixes a false or forged label to a package or other container
20 containing any controlled substance.

21 * **Sec. 2.** AS 11.71.050(a) is amended to read:

22 (a) Except as authorized in AS 17.30, a person commits the crime of
23 misconduct involving a controlled substance in the fifth degree if the person

24 (1) manufactures or delivers, or possesses with the intent to
25 manufacture or deliver, one or more preparations, compounds, mixtures, or substances
26 of an aggregate weight of one ounce or less [THAN ONE OUNCE] containing a
27 schedule VIA controlled substance;

28 (2) possesses

29 (A) less than 25 tablets, ampules, or syrettes containing a
30 schedule IIIA or IVA controlled substance;

31 (B) one or more preparations, compounds, mixtures, or

substances of an aggregate weight of less than

(i) three grams containing a schedule IIIA or IVA controlled substance except a controlled substance in a form listed in (ii) of this subparagraph;

(ii) 12 grams but more than six grams containing a schedule IIIA controlled substance listed in AS 11.71.160(f)(7) - (16) that has been sprayed on or otherwise applied to tobacco, an herb, or another organic material; or

(iii) 500 milligrams containing a schedule IIA controlled substance listed in AS 11.71.150(e)(11) - (15);

(C) less than 50 tablets, ampules, or syrettes containing a schedule VA controlled substance;

(D) one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than six grams containing a schedule VA controlled substance; or

(E) one or more preparations, compounds, mixtures, or substances of an aggregate weight of **more than** one ounce **but less than four ounces** [OR MORE] containing a schedule VIA controlled substance; [OR]

(3) fails to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under AS 17.30;

(4) under circumstances not proscribed under AS 11.71.030(a)(2), delivers any amount of a schedule VIA controlled substance to a person under 21 years of age; or

(5) manufactures a schedule VIA controlled substance through use of a solvent-based extraction method using a substance other than vegetable glycerin.

* Sec. 3. AS 11.71.060(a) is amended to read:

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the sixth degree if the person

(1) uses or displays any amount of a schedule VIA controlled substance **under circumstances not proscribed under AS 11.71.065;**

(2) possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of

(A) [LESS THAN] one ounce or less containing a schedule VIA controlled substance;

(B) six grams or less containing a schedule IIIA controlled substance listed in AS 11.71.160(f)(7) - (16) that has been sprayed on or otherwise applied to tobacco, an herb, or another organic material; or

(3) refuses entry into a premise for an inspection authorized under AS 17.30.

* **Sec. 4.** AS 11.71 is amended by adding new sections to read:

Sec. 11.71.065. Misconduct involving a controlled substance in the seventh degree. (a) Except as authorized in AS 17.30, a person commits the offense of misconduct involving a controlled substance in the seventh degree if the person

(1) is 21 years of age or older and uses or displays any amount of a schedule VIA controlled substance in a public place; or

(2) is under 21 years of age but at least 18 years of age and uses, displays, or possesses one ounce or less of a schedule VIA controlled substance.

(b) Misconduct involving a controlled substance in the seventh degree is a violation and is punishable by a fine of not more than \$100.

Sec. 11.71.067. Misconduct involving a controlled substance by a licensee.

(a) A marijuana establishment licensed under AS 17.38 or an agent or employee of the licensee may not, under circumstances not proscribed under AS 11.71.030(a)(2), with criminal negligence

(1) allow another person to deliver a schedule VIA controlled substance to a person under 21 years of age within the licensed premises;

(2) allow a person under 21 years of age to enter and remain within licensed premises;

(3) allow a person under 21 years of age to use a schedule VIA controlled substance within the licensed premises;

(4) allow a person under 21 years of age to deliver a schedule VIA controlled substance; or

(5) while working on licensed premises, deliver a schedule VIA controlled substance to a person under 21 years of age.

(b) Misconduct involving a controlled substance by a licensee is a class A misdemeanor.

* **Sec. 5.** AS 11.71 is amended by adding a new section to article 1 to read:

Sec. 11.71.092. Defense to a prosecution under AS 11.71.040 - 11.71.060.

(a) In a prosecution under AS 11.71.040 - 11.71.060 charging the manufacture, delivery, possession, possession with intent to manufacture or deliver, use, or display of a schedule VIA controlled substance, it is a defense that the defendant was 21 years of age or older at the time of the manufacture, delivery, possession, possession with intent to manufacture or deliver, use, or display, and

(1) if the charge is for delivery, the defendant delivered one ounce or less of a schedule VIA controlled substance and not more than six immature marijuana plants to a person 21 years of age or older at the time of the delivery and the delivery was without benefit to the defendant;

(2) if the charge is for possession, manufacture, or possession with the intent to manufacture, the possession or manufacture

(A) was of one ounce or less of marijuana, or six marijuana plants or less, with not more than three mature, flowering plants;

(B) occurred on property lawfully in the possession of the defendant or with the consent of the person in lawful possession of the property; and

(C) occurred on property that was reasonably secured from unauthorized access;

(3) if the charge is for use or display, the use or display

(A) took place in a location not subject to public view without the use of binoculars, aircraft, or other optical aids; and

(B) occurred on property lawfully in the possession of the defendant or with the consent of the person in lawful possession of the property.

(b) In a prosecution under AS 11.71.050 - 11.71.060 charging the possession,

1 use, or display of a schedule VIA controlled substance, it is a defense that the
 2 defendant was under 21 years of age but at least 18 years of age at the time of the
 3 possession, use, or display and

4 (1) if the charge is for possession, the possession

5 (A) was one ounce or less of a schedule VIA controlled
 6 substance;

7 (B) occurred on property lawfully in the possession of the
 8 defendant or with the consent of the person in lawful possession of the
 9 property; and

10 (C) occurred on property that was reasonably secured from
 11 unauthorized access;

12 (2) if the charge is for use or display, the use or display

13 (A) was one ounce or less of a schedule VIA controlled
 14 substance;

15 (B) took place in a location not subject to public view without
 16 the use of binoculars, aircraft, or other optical aids; and

17 (C) occurred on property lawfully in the possession of the
 18 defendant or with the consent of the person in lawful possession of the
 19 property.

20 (c) In a prosecution under AS 11.71.040 - 11.71.060 charging the
 21 manufacture, delivery, possession, possession with intent to manufacture or deliver, or
 22 display of a schedule VIA controlled substance, it is a defense that the defendant is a
 23 marijuana establishment licensed under AS 17.38 or an officer, agent, or employee of
 24 the marijuana establishment, and

25 (1) at the time of the manufacture, delivery, possession, possession
 26 with intent to manufacture or deliver, or display, the marijuana establishment was
 27 licensed under AS 17.38 or the officer, agent, or employee of the marijuana
 28 establishment was in compliance with AS 17.38;

29 (2) the manufacture, delivery, possession, possession with intent to
 30 manufacture of deliver, or display complied with the requirements of AS 17.38; and

31 (3) if the charge is for delivery of a schedule VIA controlled substance,

1 the delivery was to a person who was 21 years of age or older at the time of the
2 delivery.

3 * **Sec. 6.** AS 11.71.190(b) is amended to read:

4 (b) Marijuana, hashish, and hash oil or hashish oil are [IS A] schedule VIA
5 controlled substances [SUBSTANCE].

6 * **Sec. 7.** AS 11.71.900(14) is amended to read:

7 (14) "marijuana" means all parts [THE SEEDS, AND LEAVES,
8 BUDS, AND FLOWERS] of the plant (genus) Cannabis, whether growing or not, the
9 seeds thereof, [; IT DOES NOT INCLUDE] the resin [OR OIL] extracted from any
10 part of the plant, and [PLANTS, OR] any compound, manufacture, salt, derivative,
11 mixture, or preparation of the plant, its seeds, or its resin, including marijuana
12 concentrate; "marijuana" [FROM THE RESIN OR OIL, INCLUDING HASHISH,
13 HASHISH OIL, AND NATURAL OR SYNTHETIC
14 TETRAHYDROCANNABINOL; IT] does not include [THE STALKS OF THE
15 PLANT,] fiber produced from the stalks, oil or cake made from the seeds of the plant,
16 [ANY OTHER COMPOUND, MANUFACTURE, SALT, DERIVATIVE,
17 MIXTURE, OR PREPARATION OF THE STALKS, FIBER, OIL OR CAKE, OR
18 THE] sterilized seed of the plant that [WHICH] is incapable of germination, or the
19 weight of any other ingredient combined with marijuana to prepare topical or
20 oral administrations, food, drink, or other products;

21 * **Sec. 8.** AS 17.38.900(6) is amended to read:

22 (6) "marijuana" has the meaning given in AS 11.71.900 [MEANS
23 ALL PARTS OF THE PLANT OF THE GENUS CANNABIS WHETHER
24 GROWING OR NOT, THE SEEDS THEREOF, THE RESIN EXTRACTED FROM
25 ANY PART OF THE PLANT, AND EVERY COMPOUND, MANUFACTURE,
26 SALT, DERIVATIVE, MIXTURE, OR PREPARATION OF THE PLANT, ITS
27 SEEDS, OR ITS RESIN, INCLUDING MARIJUANA CONCENTRATE;
28 "MARIJUANA" DOES NOT INCLUDE FIBER PRODUCED FROM THE STALKS,
29 OIL, OR CAKE MADE FROM THE SEEDS OF THE PLANT, STERILIZED SEED
30 OF THE PLANT WHICH IS INCAPABLE OF GERMINATION, OR THE WEIGHT
31 OF ANY OTHER INGREDIENT COMBINED WITH MARIJUANA TO PREPARE

1 TOPICAL OR ORAL ADMINISTRATIONS, FOOD, DRINK, OR OTHER
2 PRODUCTS];

3 * **Sec. 9.** AS 17.38.900 is amended by adding a new paragraph to read:

4 (15) "marijuana concentrate" means a product created by extracting
5 cannabinoids from any part of the plant (genus) Cannabis.

6 * **Sec. 10.** AS 28.35.029(a) is amended to read:

7 (a) A person may not drive a motor vehicle on a highway or vehicular way or
8 area, when there is an open bottle, can, or other receptacle containing an alcoholic
9 beverage or an open marijuana container in the passenger compartment of the
10 vehicle, except as provided in (b) or (e) of this section.

11 * **Sec. 11.** AS 28.35.029(c) is amended by adding new paragraphs to read:

12 (6) "marijuana" has the meaning given in AS 11.71.900;

13 (7) "marijuana accessory" has the meaning given to "marijuana
14 accessories" in AS 17.38.900;

15 (8) "open marijuana container" means a receptacle or marijuana
16 accessory that contains any amount of marijuana and that is open or has a broken seal,
17 and there is evidence that marijuana has been consumed in the motor vehicle.

18 * **Sec. 12.** AS 28.35.029 is amended by adding a new subsection to read:

19 (e) Except as provided in AS 28.33.130, a person may transport an open
20 marijuana container

21 (1) in the trunk of a motor vehicle; or

22 (2) on a motor driven cycle, or behind the last upright seat in a motor
23 home, station wagon, hatchback, or similar trunkless vehicle, if the open marijuana
24 container is enclosed within another container.

25 * **Sec. 13.** AS 11.71.160(f)(1), 11.71.160(f)(2); AS 17.38.020, 17.38.030, 17.38.040, and
26 17.38.070 are repealed.

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