

HOUSE BILL NO. 387

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE CLAMAN

Introduced: 2/21/18

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to scheduled substances; relating to the Controlled Substances
2 Advisory Committee; and authorizing the attorney general to schedule substances by
3 emergency regulation or repeal an emergency regulation that scheduled a substance."

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

5 * **Section 1.** AS 11.71.100(c) is amended to read:

6 (c) The president of the Board of Pharmacy or the president's designee
7 [ATTORNEY GENERAL] is the chair [CHAIRMAN] of the committee.

8 * **Sec. 2.** AS 11.71.100(d) is amended to read:

9 (d) The committee meets at the call of the chair of the committee
10 [ATTORNEY GENERAL].

11 * **Sec. 3.** AS 11.71.110 is amended to read:

12 **Sec. 11.71.110. Duties of committee.** The committee shall

13 (1) advise the governor of the need to add, delete, or reschedule
14 substances in the schedules in AS 11.71.140 - 11.71.190;

(2) recommend regulations for adoption by the Board of Pharmacy to prevent excessive prescription of controlled substances and the diversion of prescription drugs into illicit channels;

(3) evaluate the effectiveness of programs in the state providing treatment and counseling for persons who abuse controlled substances;

(4) recommend programs to the Alaska Court System to be instituted as alternatives to the prosecution or imprisonment of offenders who have no prior criminal record involving controlled substance offenses and who are charged with crimes involving controlled substances;

(5) review and evaluate enforcement policies and practices of the Department of Public Safety and the Department of Law with regard to crimes involving controlled substances, and recommend modifications of those policies and practices consistent with the committee's assessment of the probable danger of particular controlled substances; [AND]

(6) review budget requests and recommend amounts for appropriations to the governor and the legislature for departments and agencies responsible for

(A) enforcing criminal laws pertaining to controlled substances;

(B) providing treatment and counseling of persons who abuse controlled substances; and

(C) regulating the legitimate handling of controlled substances;

and

(7) advise the attorney general of the need to schedule substances by emergency regulation.

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

Sec. 11.71.125. Emergency substance scheduling. (a) The attorney general may, by regulation, schedule a substance under this chapter regardless of whether the substance is substantially similar to a controlled substance listed in AS 11.71.140 - 11.71.180, if the attorney general finds that scheduling the substance on an emergency basis is necessary to avoid an immediate hazard to public safety.

(b) In determining whether to schedule a substance on an emergency basis, or

1 repeal an emergency regulation that scheduled a substance, the attorney general shall

2 (1) assess the degree of danger or probable danger of the substance by
3 considering

4 (A) the actual or probable abuse of the substance including the

5 (i) history and current pattern of abuse;

6 (ii) scope, duration, and significance of abuse of the
7 substance; and

8 (iii) degree of actual or possible detriment that may
9 result from abuse of the substance; and

10 (B) the risk to public health;

11 (2) consider whether the substance has been scheduled on a temporary
12 basis under federal law and may consider clandestine importation, manufacture, or
13 distribution of the substance;

14 (3) consult with the Controlled Substances Advisory Committee
15 established under AS 11.71.100; and

16 (4) consult with the chief medical officer in the Department of Health
17 and Social Services.

18 (c) The attorney general shall clearly indicate in an emergency regulation that
19 schedules a substance the appropriate schedule under this chapter that applies to the
20 substance.

21 (d) The attorney general shall post a notice on the Alaska Online Public
22 Notice System (AS 44.62.175) 30 days before the effective date of an emergency
23 regulation that schedules a substance. The notice must include

24 (1) a summary of the attorney general's findings under (b) of this
25 section; and

26 (2) the finding required for an emergency regulation under
27 AS 44.62.250(b).

28 (e) The attorney general may not adopt an emergency regulation under this
29 section that schedules an alcoholic beverage as defined in AS 04.21.080, marijuana as
30 defined in AS 17.38.900, or tobacco.

31 (f) An emergency regulation adopted under this section is subject to the

requirements in AS 44.62.260(c).

* **Sec. 5.** AS 11.71.900(4) is amended to read:

(4) "controlled substance" means a drug, substance, or immediate precursor included in the schedules set out in AS 11.71.140 - 11.71.190 **or included in those schedules by an emergency regulation adopted under AS 11.71.125;**

* **Sec. 6.** AS 11.71.900 is amended by adding a new paragraph to read:

(31) "substance" means a drug, controlled substance, or immediate precursor included in the schedules set out in AS 11.71.140 - 11.71.190 or in an emergency regulation adopted under AS 11.71.125, AS 44.62.250, and 44.62.260.

* **Sec. 7.** AS 44.23.020 is amended by adding a new subsection to read:

(j) The attorney general may by regulation schedule a substance on an emergency basis as provided in AS 11.71.125 and AS 44.62 (Administrative Procedure Act).

* **Sec. 8.** AS 44.62.175(a) is amended to read:

(a) The lieutenant governor shall develop and supervise the Alaska Online Public Notice System, to be maintained on the state's site on the Internet. The lieutenant governor shall prescribe the form of notices posted on the system by state agencies. The Alaska Online Public Notice System must include

(1) notices of proposed actions given under AS 44.62.190(a);

(2) notices of state agency meetings required under AS 44.62.310(e), even if the meeting has been held;

(3) notices of solicitations to bid issued under AS 36.30.130;

(4) notices of state agency requests for proposals issued under AS 18.55.255, 18.55.320; AS 36.30.210; AS 37.05.316; AS 38.05.120; and AS 43.40.010;

(5) executive orders and administrative orders issued by the governor;

(6) written delegations of authority made by the governor or the head of a principal department under AS 44.17.010;

(7) the text or a summary of the text of a regulation or order of repeal of a regulation for which notice is given under **AS 11.71.125 or** AS 44.62.190(a), including an emergency regulation or repeal regardless of whether it has taken effect;

(8) notices required by AS 44.62.245(b) regarding an amended version of a document or other material incorporated by reference in a regulation;

(9) a summary of the text of recently issued published opinions of the attorney general;

(10) a list of vacancies on boards, commissions, and other bodies whose members are appointed by the governor;

(11) in accordance with AS 39.52.240(h), advisory opinions of the attorney general; [AND]

(12) notices required by AS 26.30.010(d) and (e) regarding applications for military facility zones; and

(13) notices of substances scheduled by an emergency regulation under AS 11.71.125.

* Sec. 9. AS 44.62.200(a) is amended to read:

(a) The notice of proposed adoption, amendment, or repeal of a regulation must include

(1) a statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation;

(2) reference to the authority under which the regulation is proposed and a reference to the particular code section or other provisions of law that are being implemented, interpreted, or made specific;

(3) an informative summary of the proposed subject of agency action;

(4) other matters prescribed by a statute applicable to the specific agency or to the specific regulation or class of regulations;

(5) a summary of the fiscal information required to be prepared under AS 44.62.195; and

(6) for a regulation under AS 11.71.125, a summary of the attorney general's compliance with the requirements of AS 11.71.125(b).

* Sec. 10. AS 44.62.250 is amended to read:

Sec. 44.62.250. Emergency regulations. Except for a regulation adopted under AS 11.71.125, a [A] regulation or order of repeal may be adopted as an emergency regulation or order of repeal if a state agency makes a written finding,

including a statement of the facts that constitute the emergency, that the adoption of the regulation or order of repeal is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The requirements of AS 44.62.040(c), 44.62.060, and 44.62.190 - 44.62.215 do not apply to the initial adoption of emergency regulations; however, upon adoption of an emergency regulation, the adopting agency shall immediately submit a copy of it to the lieutenant governor for filing and for publication in the Alaska Administrative Register, and, within five days after filing by the lieutenant governor, the agency shall give notice of the adoption in accordance with AS 44.62.190(a). Failure to give the required notice by the end of the 10th day automatically repeals the regulation.

* **Sec. 11.** AS 44.62.250 is amended by adding a new subsection to read:

(b) A regulation or order of repeal may be adopted as an emergency regulation under AS 11.71.125 if the attorney general makes a written finding that the requirements of AS 11.71.125 are met. The requirements of AS 44.62.190 - 44.62.215 do not apply to the adoption or order of repeal by the attorney general of a regulation to schedule a substance by emergency regulation under AS 11.71.125.

* **Sec. 12.** AS 44.62.260 is amended to read:

Sec. 44.62.260. Limitation on effective period of emergency regulations. (a) Except as provided in (c) of this section, a [A] regulation adopted as an emergency regulation does not remain in effect more than 120 days unless the adopting agency complies with AS 44.62.040(c), 44.62.060, and 44.62.190 - 44.62.215 either before submitting the regulation to the lieutenant governor or during the 120-day period.

(b) Except as provided in (c) of this section, before [BEFORE] the expiration of the 120-day period, the agency shall transmit to the lieutenant governor for filing a certification that AS 44.62.040(c), 44.62.060, and 44.62.190 - 44.62.215 were complied with before submitting the regulation to the lieutenant governor, or that the agency complied with those sections within the 120-day period. Failure to so certify repeals the emergency regulation; it may not be renewed or refiled as an emergency regulation.

* **Sec. 13.** AS 44.62.260 is amended by adding a new subsection to read:

(c) A substance scheduled by the attorney general by emergency regulation

1 under AS 11.71.125 may remain on the schedule under the emergency regulation for a
2 period not to exceed 720 days. An emergency regulation adopted by the attorney
3 general under AS 11.71.125 does not remain in effect for more than 720 days unless

4 (1) the attorney general complies with AS 44.62.040(c), 44.60.060,
5 and 44.62.190 - 44.62.215 either before submitting the regulation to the lieutenant
6 governor or during the 720-day period; and

7 (2) before the expiration date of the 720-day period, the attorney
8 general transmits to the lieutenant governor for filing a certification that
9 AS 44.62.040(c), 44.60.060, and 44.62.190 - 44.62.215 were complied with before
10 submitting the regulation to the lieutenant governor, or that the attorney general
11 complied with AS 44.60.040(c), 44.62.060, and 44.62.190 - 44.62.215 within the 720-
12 day period; failure to certify the emergency regulation repeals the emergency
13 regulation; the emergency regulation may not be renewed or refiled as an emergency
14 regulation.

15 * **Sec. 14.** AS 44.62.270 is amended to read:

16 **Sec. 44.62.270. State policy.** It is the state policy that emergencies are held to
17 a minimum and are rarely found to exist. **Nothing in this section limits the attorney**
18 **general from scheduling a substance by emergency regulation under**
19 **AS 11.71.125.**