

CS FOR HOUSE BILL NO. 373(JUD) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 4/17/02

Offered: 3/26/02

Sponsor(s): REPRESENTATIVES MURKOWSKI, Mulder

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to marijuana and controlled substances and forfeitures related to**
2 **controlled substances."**

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

4 * **Section 1.** AS 11.71.080 is amended to read:

5 **Sec. 11.71.080. Prosecutions involving [AGGREGATE WEIGHT**
6 **OF] live marijuana plants.** For purposes of calculating the aggregate weight of a
7 live marijuana plant, the aggregate weight shall be the **measured** weight of the
8 marijuana when reduced to its commonly used form. **Only the amount of marijuana**
9 **necessary to establish the violation of this chapter must be reduced to its**
10 **commonly used form. Additional marijuana and marijuana plants are**
11 **contraband subject to AS 17.30.110.**

12 * **Sec. 2.** AS 17.30.110 is amended by adding a new subsection to read:

13 (b) Contraband shall be seized and summarily forfeited to the state without the
14 need for further proceedings of any type under this chapter or another provision of

1 law. Contraband includes

2 (1) a schedule IA or IIA controlled substance that has no currently
3 accepted medical use in treatment in the United States;

4 (2) a controlled substance that has been manufactured, distributed,
5 dispensed, acquired, or possessed in violation of this chapter or AS 11.71;

6 (3) plants from which a controlled substance can be derived and that
7 have been planted or cultivated in violation of this chapter or AS 11.71 or that are
8 grown in the wild;

9 (4) a controlled substance or a plant from which a controlled substance
10 may be derived that comes into the possession of the state or a law enforcement
11 agency of the state or a municipality if the owner is unknown;

12 (5) dangerous, toxic, or hazardous raw materials or dangerous, toxic,
13 or hazardous equipment used or intended to be used in the manufacture of a controlled
14 substance in violation of this chapter or AS 11.71.

15 * **Sec. 3.** AS 17.30.112(a) is amended to read:

16 (a) Property listed in AS 17.30.110 **and not summarily forfeited to the state**
17 **as contraband under AS 17.30.110(b)** may be forfeited to the state either upon
18 conviction of the defendant of a violation of this chapter or AS 11.71, or upon
19 judgment of a court in a separate civil proceeding in rem. The court may order a
20 forfeiture in the in rem proceeding if it finds that an item specified in AS 17.30.110
21 was used during or in aid of a violation of this chapter or AS 11.71.

22 * **Sec. 4.** AS 17.30.114(a) is amended to read:

23 (a) Property listed in AS 17.30.110 may be seized by a peace officer upon an
24 order issued by a court having jurisdiction over the property upon a showing of
25 probable cause that the property may be forfeited under AS 17.30.110. Seizure
26 without a court order may be made if

27 (1) the seizure is incident to a valid arrest or a search under a valid
28 search warrant;

29 (2) the property subject to seizure has been the subject of an earlier
30 judgment in favor of the state in a criminal proceeding or civil proceeding in rem
31 under this chapter or AS 11.71; [OR]

1 (3) there is probable cause that the property was used, is being used, or
 2 is intended for use, in violation of this chapter or AS 11.71 and the property is easily
 3 movable; property seized under this paragraph may not be held for more than 48 hours
 4 without a court order obtained to continue its detention; or

5 **(4) the property is contraband under AS 17.30.110(b).**

6 * Sec. 5. AS 17.30.114(b) is amended to read:

7 (b) Property taken or detained under (a) of this section **that is summarily**
 8 **forfeited to the state under AS 17.30.110(b)** shall be held in the custody of either the
 9 commissioner of public safety or a municipal law enforcement agency authorized by
 10 the commissioner of public safety to retain custody of property listed in AS 17.30.110
 11 subject **to disposition as provided in AS 17.30.126. Property taken or detained**
 12 **under (a) of this section that is not summarily forfeited to the state under**
 13 **AS 17.30.110(b) shall be held in the custody of the commissioner of public safety**
 14 **or a municipal law enforcement agency authorized by the commissioner of public**
 15 **safety to retain custody of property, and, subject** only to the orders and decrees of
 16 the court having jurisdiction over any forfeiture proceedings, [IF PROPERTY IS
 17 SEIZED UNDER THIS CHAPTER,] the commissioner of public safety or an
 18 authorized municipal law enforcement agency may

19 (1) place the property under seal;

20 (2) remove the property to a place designated by the court;

21 (3) take custody of the property and remove it to an appropriate
 22 location for disposition in accordance with law; or

23 (4) with court approval, transfer the property to another state or federal
 24 law enforcement agency for forfeiture proceedings by that agency; the court having
 25 jurisdiction shall grant the approval under this paragraph if the property

26 (A) will be retained within the jurisdiction of the court by the
 27 agency to which the property is being transferred; or

28 (B) is

29 (i) not needed as evidence; or

30 (ii) needed as evidence, and the property is fungible or
 31 the property's evidentiary value can otherwise be preserved without

1 retaining the property within the jurisdiction of the court.

2 * **Sec. 6.** AS 17.30.116(a) is amended to read:

3 (a) Within 20 days after a seizure under AS 17.30.110 - 17.30.126, the
4 commissioner of public safety shall, by certified mail, notify any person known to
5 have an interest in an item with an appraised value of \$500 or more, or who is
6 ascertainable from official registration numbers, licenses, or other state, federal, or
7 municipal numbers on the item, of the pending forfeiture action. Additionally, the
8 commissioner of public safety shall publish notice of forfeiture action of an item
9 valued at \$500 or more in a newspaper of general circulation in the judicial district in
10 which the seizure was made, or if no newspaper is published in that judicial district, in
11 a newspaper published in the state and distributed in that judicial district. The notice
12 shall be published once each week during four consecutive calendar weeks. The
13 requirements of this subsection do not apply to **contraband under AS 17.30.110(b)**
14 [THE FORFEITURE OF CONTROLLED SUBSTANCES WHICH HAVE BEEN
15 MANUFACTURED, DISTRIBUTED, DISPENSED, OR POSSESSED IN
16 VIOLATION OF THIS CHAPTER OR AS 11.71, REGARDLESS OF THEIR
17 VALUE].

18 * **Sec. 7.** AS 17.30.122 is amended to read:

19 **Sec. 17.30.122. State disposal of forfeited property.** Property forfeited
20 under AS 17.30.110 - 17.30.126 other than **contraband under AS 17.30.110(b)**
21 [CONTROLLED SUBSTANCES] and firearms shall be disposed of by the
22 commissioner of administration in accordance with applicable law. Firearms shall be
23 disposed of as provided in AS 18.65.340. As to property other than firearms or
24 **contraband** [CONTROLLED SUBSTANCES], the commissioner of administration
25 may

26 (1) destroy property harmful to the public;

27 (2) sell the property and use the proceeds for payment of all proper
28 expenses of the proceedings for forfeiture and sale, including expenses of seizure,
29 custody, and court costs;

30 (3) take custody of the property and authorize its use in the
31 enforcement of this chapter or AS 11.71, or transfer it to another agency of the state or

1 a political subdivision of the state for a use in furtherance of the administration of
2 justice;

3 (4) take custody of the property and remove it for disposition in
4 accordance with law;

5 (5) forward it to the Drug Enforcement Administration of the United
6 States Department of Justice for disposition; or

7 (6) transfer ownership of an aircraft to the Alaska Wing, Civil Air
8 Patrol.

9 * **Sec. 8.** AS 17.30.124 is amended by adding a new subsection to read:

10 (c) A court may not order the remittance of contraband seized under
11 AS 17.30.110(b).

12 * **Sec. 9.** AS 17.30.126 is repealed and reenacted to read:

13 **Sec. 17.30.126. Disposition of contraband.** The commissioner of public
14 safety or a municipal law enforcement agency authorized by the commissioner to
15 retain custody of property is responsible for the disposal of contraband under
16 AS 17.30.110(b) in accordance with procedures and requirements prescribed by the
17 commissioner. However, before contraband is destroyed, the commissioner or agency
18 shall, if evidence of the contraband is necessary for criminal or other proceedings,
19 retain a representative sample of the contraband sufficient for independent laboratory
20 or chemical analysis and photographs or other documentation of the contraband. If
21 evidence of the contraband is retained as provided in this section, the existence of the
22 entire amount of contraband is presumptively genuine or authentic under Rule 902,
23 Alaska Rules of Evidence.