

SENATE BILL NO. 146

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/18/18

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."**

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 in AS 11.71 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; and

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

9 (B) the risk to public health;

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

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

15 (4) consult with the chief medical officer in the Department of Health
16 and Social Services before scheduling a substance on an emergency basis.

17 (c) In scheduling a substance by emergency regulation, and after compliance
18 with (a) of this section, the attorney general shall clearly indicate in emergency
19 regulation the appropriate schedule under AS 11.71 that applies to the substance.

20 (d) The attorney general shall post a notice on the Alaska Online Public
21 Notice System (AS 44.62.175) 30 days before the effective date of an emergency
22 scheduling action. The notice shall include a summary of the attorney general's
23 findings under (b) of this section and the finding required for an emergency regulation
24 under AS 44.62.250(b).

25 (e) Authority to schedule substances under this section does not extend to
26 alcoholic beverages as defined in AS 04.21.080, marijuana as defined in
27 AS 17.38.900, or tobacco.

28 (f) An emergency regulation adopted under this section is subject to the
29 requirements in AS 44.62.260(c).

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

31 (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 in regulation under AS 11.71.125 and AS 44.62.250 and 44.62.260;**

* **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 regulation under AS 11.71.125 and AS 44.62.250 and 44.62.260.

* **Sec. 7.** AS 44.23.020(b) is amended to read:

(b) The attorney general shall

(1) defend the Constitution of the State of Alaska and the Constitution of the United States of America;

(2) bring, prosecute, and defend all necessary and proper actions in the name of the state for the collection of revenue;

(3) represent the state in all civil actions in which the state is a party;

(4) prosecute all cases involving violation of state law, and file informations and prosecute all offenses against the revenue laws and other state laws where there is no other provision for their prosecution;

(5) administer state legal services, including the furnishing of written legal opinions to the governor, the legislature, and all state officers and departments as the governor directs; and give legal advice on a law, proposed law, or proposed legislative measure upon request by the legislature or a member of the legislature;

(6) draft legal instruments for the state;

(7) make available a report to the legislature, through the governor, at each regular legislative session

(A) of the work and expenditures of the office; and

(B) on needed legislation or amendments to existing law;

(8) prepare, publish, and revise as it becomes useful or necessary to do so an information pamphlet on landlord and tenant rights and the means of making complaints to appropriate public agencies concerning landlord and tenant rights; the contents of the pamphlet and any revision shall be approved by the Department of Law before publication; [AND]

(9) perform all other duties required by law or which usually pertain to the office of attorney general in a state; and

(10) 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

1 applications for military facility zones; and

2 (13) notices of substances scheduled on an emergency basis under
 3 AS 11.71.125.

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

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

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

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

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

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

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

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

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

20 **Sec. 44.62.250. Emergency regulations. Except for a regulation adopted**
 21 **under AS 11.71.125, a** [A] regulation or order of repeal may be adopted as an
 22 emergency regulation or order of repeal if a state agency makes a written finding,
 23 including a statement of the facts that constitute the emergency, that the adoption of
 24 the regulation or order of repeal is necessary for the immediate preservation of the
 25 public peace, health, safety, or general welfare. The requirements of AS 44.62.040(c),
 26 44.62.060, and 44.62.190 - 44.62.215 do not apply to the initial adoption of
 27 emergency regulations; however, upon adoption of an emergency regulation the
 28 adopting agency shall immediately submit a copy of it to the lieutenant governor for
 29 filing and for publication in the Alaska Administrative Register, and within five days
 30 after filing by the lieutenant governor the agency shall give notice of the adoption in
 31 accordance with AS 44.62.190(a). Failure to give the required notice by the end of the

1 10th day automatically repeals the regulation.

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

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

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

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

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

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

22 (c) A substance that is added by emergency regulation by the attorney general
23 under AS 11.71.125 may remain on the schedule through emergency regulation for a
24 period not to exceed 720 days. A regulation adopted by the attorney general under
25 AS 11.71.125 may not be in effect for more than 720 days unless

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

29 (2) before the expiration date of the 720-day period, transmits to the
30 lieutenant governor for filing a certification that AS 44.62.040(c), 44.60.060, and
31 44.62.190 - 44.62.215 were complied with before submitting the regulation to the

1 lieutenant governor, or that the agency complied with AS 44.60.040(c), 44.62.060, and
2 44.62.190 - 44.62.215 within the 720-day period; failure to certify the emergency
3 regulation repeals the emergency regulation; the emergency regulation may not be
4 renewed or refiled as an emergency regulation.

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

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