Introduced: 2/1/68
Referred: Judiciary and Health, Welfare and Education

IN THE HOUSE BY HARRIS

HOUSE BILL NO. 486

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to drug abuse."

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

* Section 1. DECLARATION OF INTENT. (a) The Legislature of the State of Alaska finds that it is essential to the public health and safety to regulate and control the manufacture, distribution, delivery and possession of depressant and stimulant drugs, and other drugs which have a potential for abuse because of their depressant or stimulant effect on the central nervous system or because of their hallucinogenic effect, as defined in this Act.

(b) It is, therefore, declared to be the policy and intent of the legislature and the purpose of this Act to regulate and control manufacture, distribution, delivery, and possession, and in particular, but without limitation of purpose, to afford the public the therapeutic benefits of these drugs under medical supervision; to complement and supplement the laws and regulations of the Congress of the United States and the appropriate agencies of the federal government affecting such manufacture, distribution, and delivery; to prevent the manufacture, distribution and delivery for harmful or illegitimate purposes; and to place upon manufacturers, wholesalers, licensed, compounders of prescriptions, and persons prescribing these drugs, a basic responsibility for preventing the improper distribution of these drugs to the extent that the drugs are produced, handled, sold, or prescribed by them.

(c) The legislature further finds and declares that there is a substantial traffic in counterfeit drugs stimulating the brand or other identifying mark or device of the manufacturer of the genuine article; that this traffic poses a serious hazard to the health of innocent consumers of these drugs

because of the lack of proper qualifications, facilities, and manufacturing controls on the part of the counterfeiter, whose operations are clandestine; and that these factors require enactment of additional controls with respect to these drugs.

* Sec. 2. AS 17 is amended by adding a new chapter to read:

CHAPTER 11. ALASKA DRUG ABUSE CONTROL ACT.

Sec. 17.11.010. PROHIBITED ACTS. The following acts and the causing of them are prohibited:

(1) manufacture, compounding, or processing of a drug in violation of sec. 60(a) of this chapter;

(2) sale, delivery, or other disposition of a drug in violation of sec. 60(b) of this chapter;

(3) possession of a drug violation of sec. 60(c) of this chapter;

(4) obtaining a drug in violation of sec. 60(d) of this chapter;

(5) failure to prepare or obtain, or the failure to keep, a complete and accurate record with respect to any drug as required by sec. 60(e) - (h) of this section;

(6) the refusal to permit access to or copying of any record as required by sec. 60(e) - (h) of this chapter;

(7) the refusal to permit entry or inspection as authorized by sec. 60(e) - (h) of this chapter;

(8) the filling or refilling of any prescription in violation of sec. 60(i) of this chapter;

(9) making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or

labeling thereof so as to render the drug a counterfeit drug.

(10) doing an act which causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug.

Sec. 17.11.020. ADDITIONAL REMEDIES. In addition to the remedies provided in this chapter, the commissioner is authorized to apply to the superior court for, and the court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining a person from violating a provision of sec. 10 of this chapter; irrespective of whether or not there exists an adequate remedy at law.

Sec. 17.11.030. PENALTIES. (a) A person who violates a provision of sec. 10 of this chapter is guilty of a felony and upon conviction is punishable by imprisonment for not less than one nor more than five years, or by a fine of not more than $5,000, or by both; but if the violation is a subsequent offense, the person is punishable by imprisonment for not less than five nor more than 10 years, or by a fine of not more than $10,000, or by both.

(b) However, a person who, having attained his 18th birthday, violates sec. 10 of this chapter by selling, delivering, or otherwise disposing of any depressant or stimulant drug to a person who has not attained his 21st birthday is, if there is no previous conviction of the person under this section which has become final, punishable by imprisonment for not less than five nor more than 10 years, or by a fine of not more than $10,000, or by both, and for the second or subsequent conviction for a violation is punishable by imprisonment for not less than 10 nor more than 20 years, or by a fine of not more than $20,000, or by both.

(c) No person is subject to the penalties in (a) of this section, for having violated sec. 10(9) and (10) of this chapter if the person

acted in good faith and had no reason to believe that use of the punch, die, plate, stone, or other thing involved would result in a drug being counterfeit drug or for having violated sec. 10(10) of this chapter if the person doing the act or causing it to be done acted in good faith and had no reason to believe that the drug was a counterfeit drug.

Sec. 17.11.040. AUTHORITY. (a) The following may be seized without warrant by an authorized agent of the department whenever he has reasonable grounds to believe they are, (1) a depressant or stimulant drug with respect to which a prohibited Act within the meaning of sec. 10 of this chapter has occurred, (2) a drug that is a counterfeit, (3) a container of the depressant or stimulant drugs or a counterfeit drug, (4) equipment used in manufacturing, compounding, or processing a depressant or stimulant drug with respect to which drug a prohibited act within the meaning of sec. 10 of this chapter has occurred, (5) a punch, die, plate, stone, labeling, container or other thing used or designed for use in making a counterfeit drug or drugs, and (6) a conveyance being used to transport, carry or hold a depressant or stimulant drug with respect to which a prohibited act within the meaning of sec. 10 of this chapter has occurred; or a conveyance being used to transport, carry or hold a counterfeit drug in violation of sec. 60(b) of this chapter. As used in this subsection, "conveyance" includes every description of vehicle, vessel, aircraft, or other contrivance used, or capable of being used as a means of transportation on land, in water, or through the air.

(b) When an article, equipment, conveyance, or other thing is seized under (a) of this section the commissioner shall, within five days, cause to be filed in the district court in whose jurisdiction the merchandise is seized or detained a complaint for condemnation of the merchandise as provided in this section. The proceedings shall be brought in the name of the state by the prosecuting attorney of the

judicial district in which the article was seized, and the complaint shall be verified by an authorized agent of the state in a manner required by the law of this state. The complaint shall describe the merchandise, state its location, state the name of the person in actual possession, state the name of the owner, if known to the authorized agent of the state, allege the essential elements of the violation which is claimed to exist, and shall conclude with a prayer of due process to enforce the forfeiture. Upon the filing of the complaint, the court shall promptly cause process to issue to the state police officer in that judicial district, commanding him to seize the goods described in the complaint, and to hold them for further order of the court. The police officer shall at the time of seizure, serve a copy of the process upon the owner of the merchandise. This service may be made personally, by mail, or by publication according to the rules governing the service of civil process in this state. At the expiration of 20 days after the seizure, if no claimant has appeared to defend the complaint, the court shall order the police officer to dispose of the seized merchandise.

(c) A person having an interest in the alleged article, equipment, or other thing proceeded against, or a person, against whom a civil or criminal liability would exist if the merchandise is in violation of sec. 10 of this chapter may, within 20 days following the police officer's seizure, appear and file answer or demurrer to the complaint. The answer or demurrer shall allege the interest or liability of the party filing it. In all other respects the issue shall be made up as in other civil actions.

(d) An article, equipment, conveyance or other thing condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct and the proceeds, if sold, less the legal costs

and charges, shall be paid into the general fund; but the article, equipment, or other thing shall not be sold under a decree contrary to provisions of this chapter. Whenever in a proceedings under this section the condemnation of equipment or a conveyance or other thing (other than a drug) is decreed, the court shall allow the claim of any claimant, to the extent of the claimant's interest, for remission or mitigation of a forfeiture if the claimant proves to the satisfaction of the court that, (1) he has not committed or caused to be committed a prohibited act referred to in (a) of this section and has no interest in any drug referred to in (a) of this section, (2) he has an interest in the equipment or other thing as owner or lienor or otherwise, acquired by him in good faith, and (3) he at no time had any knowledge or reason to believe that the equipment, or conveyance or other thing was being or would be used in, or to facilitate, the violation of the laws of this state relating to depressant or stimulant drugs or counterfeit drugs.

(e) When a decree of condemnation is entered against the article, equipment, conveyance or other thing, court costs and fees and storage and other proper expenses, shall be awarded against the person, if any, intervening as claimant of the article.

Sec. 17.11.050. PROSECUTIONS. (a) It is the duty of each state attorney to whom the department reports a violation of this chapter, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

(b) Nothing in this chapter may be construed as requiring the commissioner to report for the institution of proceedings under this chapter, minor violations of this chapter, whenever the commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

Sec. 17.11.060. EXEMPTIONS. No person may manufacture, compound

or process in this state a depressant or stimulant drug, except that this prohibition does not apply to the following persons whose activities in connection with any drug are as specified in this subsection:

(1) manufacturers, compounders, and processors, operating in conformance with the laws of this state relating to the manufacture, compounding or processing of drugs, who are regularly engaged in preparing pharmaceutical chemicals or prescription drugs for distribution through branch outlets, through wholesale druggists, or by direct shipment

(A) to pharmacies or to hospitals, clinics, public health agencies or physicians for dispensing by registered pharmacists upon prescriptions, or for use by or under the supervision of practitioners licensed in this state to administer drugs in the course of their professional practice; or

(B) to laboratories or research or educational institutions for their use in research, teaching or chemical analysis;

(2) suppliers of manufacturers, compounders, and processors referred to in (a)(1) of this section;

(3) wholesale druggists who maintain their establishments in conformance with state and local laws relating to the manufacture, compounding or processing of drugs and are regularly engaged in supplying prescription drugs (A) to pharmacies, or to hospitals, clinics, public health agencies, or physicians for dispensing by registered pharmacists upon prescriptions or for use by or under the supervision of practitioners licensed in this state to administer these drugs in the course of their professional practice, or (B) to laboratories or research or educational institutions for their use in research, teaching, or clinical analysis;

(4) pharmacies, hospitals, clinics and public health agencie

which maintain their establishments in conformance with state and local laws regulating the practice of pharmacy and medicine which are regularly engaged in dispensing drugs upon prescriptions of practioners licensed in this state to administer drugs for patients under the care of the practioners in the course of their professional practice;

(5) practitioners licensed in this state to prescribe or administer depressant or stimulant drugs, while acting in the course of their professional practice;

(6) persons who use depressant or stimulant drugs in research, teaching or chemical analysis and not for sale;

(7) officers and employees of this state, or of a political subdivision of this state or of the United States while acting in the course of their official duties;

(8) an employee or agent of a person described in (a)(1) - (a)(6) of this section, and a nurse or other medical technician under the supervision of a practitioner licensed by law in this state to administer depressant or stimulant drugs, while the employee, nurse, or medical technician is acting in the course of his employment or occupation and not on his own account.

(b) No person other than, (1) a person described in (a) of this section while acting in the ordinary and authorized course of his business, profession, occupation, or employment, or (2) a common or contract carrier or warehouseman, or his employee, whose possession of a depressant or stimulant drug or counterfeit drug is in the usual course of his business or employment as such, may sell, deliver or otherwise dispose of a depressant or stimulant drug or counterfeit drug to another person.

(c) No person, other than a person described in (a) or (b)(2) of this section may possess a depressant or stimulant drug unless, (1) the

drug was obtained upon a valid prescription, and is held in the original container in which the drug was delivered; or (2) the drug was delivered by a practitioner in the course of his professional practice and the drug is held in the immediate container in which the drug was delivered.

(d) No person other than a person described in (a)(7) of this section may obtain or attempt to obtain a depressant or stimulant drug by,(1) fraud, deceit, misrepresentation or subterfuge; (2) falsely assuming the title of or representing himself to be a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other persons authorized to possess stimulant or depressant drugs; (3) the use of a forged or altered prescription; or (4) the use of a false name or a false address on a prescription; provided this subsection does not apply to drug manufacturers, their agents or employees, when the manufacturers, their agents or employees are authorized to engage in and are actually engaged in investigative activities directed toward the safeguarding of the drug manufacturer's trademark.

(e) A person engaged in manufacturing, compounding, processing, selling, delivering or otherwise disposing of a depressant or stimulant drug shall, upon the effective date of this chapter, prepare a complete and accurate record of all stocks of each drug on hand and shall keep the record for three years; except that if this record has already been prepared in accordance with sec. 511(d) of the federal Act, no additional record is required provided that all records prepared under sec. 511(d) of the federal Act have been retained and are made available to the department upon request. On and after the effective date of this chapter, a person manufacturing, compounding, or processing a depressant or stimulant drug shall prepare and keep, for not less than three years, a complete and accurate record of the kind and quantity of each drug manufactured, compounded, or processed and the date of the manufacture,

compounding, or processing; a person selling, delivering, or otherwise disposing of a depressant or stimulant drug shall prepare or obtain, and keep for not less than three years, a complete and accurate record of the kind and quantity of each drug received, sold, delivered, or otherwise disposed of, the name and address from whom it was received and to whom it was sold, delivered, or otherwise disposed of, and the date of the transaction.

(f) A person required by (e) of this section to prepare or obtain and keep records, and a carrier maintaining records with respect to any shipment containing a depressant or stimulant drug, and a person in charge, or having custody, of the records, shall, upon request of an officer or employee designated by the commissioner permit the officer or employee at reasonable times to have access to and copy the records. For the purposes of verification of the records and of the enforcement of this chapter, officers or employees designated by the commissioner are authorized to enter, at reasonable times, any factory, warehouse, establishment, or vehicle in which a depressant or stimulant drug, manufactured, compounded, processed, sold, delivered, or otherwise disposed of and to inspect, within reasonable limits and in a reasonable manner, the factory, warehouse, establishment, or vehicle, and all pertinent equipment, finished and unfinished material, containers and labeling therein, and all things therein, and to inventory the stock of these drugs and obtain samples of these drugs.

(g) No inspection authorized by (f) of this section extends to (1) financial data, (2) sales data other than shipment data, (3) pricing data, (4) personnel data, or (5) research data.

(h) The provisions of (e) - (g) of this section do not apply to a licensed practioner described in (a)(5) of this section with respect to a depressant or stimulant drug received, prepared, processed,

administered, or dispensed by him in the course of his professional practice, unless the practitioner regularly engages in dispensing these drugs to his patients for which they are charged, either separately or together with charges for other professional services.

(i) No prescription for a depressant or stimulant drug may be filled or refilled more than six months after the date on which the prescription was issued and no prescription which is authorized to be refilled may be refilled more than five times, except that nothing in this chapter may be construed as preventing a practitioner from issuing a new prescription for the same drug either in writing or orally. An oral prescription for the drug shall be promptly reduced to writing on a new prescription blank and filed by the pharmacist filling it.

(j) Depressant or stimulant drugs exempted under sec. 511(f) of the federal Act are exempted from the application of this section.

Sec. 17.11.070. AUTHORITY OF AGENT. (a) An officer or employee of the department designated by the commissioner to conduct examinations, investigations, or inspections under this chapter relating to depressant or stimulant drugs or to counterfeit drugs may, when so authorized by the commissioner,

(1) carry firearms;

(2) execute and serve search warrants and arrest warrants;

(3) execute seizure by process issued under sec. 40 of this chapter;

(4) make arrests without warrant for offenses under this chapter with respect to these drugs if the offense is committed in his presence or, in the case of a felony, if he has probable cause to believe that the person so arrested has committed, or is committing, the offense;

(5) make before the institution of libel proceedings under

Sec. 40(b) of this chapter, seizures of drugs or containers or conveyances or of equipment, punches, dies, plates, stone, labeling, or other things, if they are, or he has reasonable grounds to believe that they are, subject to seizure and condemnation under sec. 40 of this chapter.

Sec. 17.11.080. REGULATIONS. The authority to promulgate regulations for the efficient enforcement of this chapter is vested in the commissioner.

Sec. 17.11.090. DEFINITIONS. In this Act

(1) "commissioner" means the commissioner of the Department of Health and Welfare;

(2) "counterfeit drug" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and which thereby falsely purports, or is represented to be the product of, or to have been packed or distributed by, the other drug manufacturer, processor, packer, or distributor;

(3) "depressant or stimulant drug" means:

(A) a drug which contains any quantity of barbituric acid or any of the salts of barbituric acid; or any derivative of barbituric acid which has been designated under sec. 502(d) of the federal Act as habit-forming;

(B) a drug which contains any quantity of amphetamine or any of its optical isomers, any salt of amphetamine or any salt of an optical isomer of amphetamine, or any substance designated by regulations promulgated under the Federal Act as

habit-forming because of its stimulant effect on the central nervous system; or

(C) a drug which contains any quantity of a substance designated by existing regulations promulgated under the federal Act as having a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect;

(4) "department" means the Department of Health and Welfare;

(5) "drug" means (A) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, (B) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; (C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (D) articles intended for use as a component of any article specified in (5)(A) (B), of (C) of this section, but does not include devices or their components, parts, or accessories;

(6) "federal Act" means the Federal Food, Drug, and Cosmetic Act 52 Stat 1040 (1938), 21 U.S.C. sections 301-392;

(7) "manufacture, compound or process" includes re-packaging or otherwise changing the container, wrapper, or labeling of a drug package in the furtherance of the distribution of the drug from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer, and "manufacturers, compounders, and processors" refer to persons engaged in these defined activities;

(8) "practitioner" means a physician, dentist, veterinarian, or other person licensed in this state to prescribe or administer drugs which are subject to this chapter.

Sec. 3. The following laws are repealed: AS 17.10.010 - 17.10.230;

AS 17.15.010 - 17.15.040; AS 17.15.060 - 17.15.110; AS 17.20.080 - 17.20.113.