

Original sponsor: Harris

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fare and Education

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 486

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to depressant, hallucinogenic
7 and stimulant drugs."

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

9 * Section 1. DECLARATION OF INTENT. (a) The Legislature of
10 the State of Alaska finds that it is essential to the public health
11 and safety to regulate the manufacture, distribution and possession of
12 depressant, hallucinogenic and stimulant drugs, as defined in this Act.

13 (b) It is the purpose of this Act to regulate the manufacture,
14 distribution, and possession of these drugs while affording the public
15 the therapeutic benefits of them under medical supervision; to comple-
16 ment and supplement the federal laws and regulations affecting the
17 named activities; to prevent the manufacture and distribution for
18 harmful or illegitimate purposes; and to place upon manufacturers,
19 wholesalers, licensed compounders of prescriptions, and persons
20 prescribing these drugs a basic responsibility for preventing the
21 improper distribution of these drugs to the extent that the drugs are
22 produced, handled, sold or prescribed by them.

23 (c) The legislature further finds that the distribution and sale of
24 certain drugs are more serious offenses against society than the mere
25 use of the drugs and that distribution to a minor is a graver offense
26 than distribution to an adult. It is the intent of the legislature
27 that this latter factor be considered by the courts in exercising their
28 discretion in imposing the sentences prescribed in this Act for the
29 distribution and sale of the named drugs.

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

2 CHAPTER 12. DRUG ABUSE CONTROL.

3 Sec. 17.12.010. ACTS PROHIBITED. Except as otherwise provided
4 in this chapter it is unlawful for a person to manufacture, compound,
5 counterfeit, possess, have under his control, sell, prescribe, adminis-
6 ter, dispense, give, barter, supply or distribute in any manner, a
7 depressant, hallucinogenic or stimulant drug.

8 Sec. 17.12.020. AUTHORIZED POSSESSION. A person may lawfully
9 possess a depressant, hallucinogenic or stimulant drug that has been
10 prescribed, sold or dispensed by a practitioner if the drugs are

11 (1) for use by the person in possession or a member of his
12 household; or

13 (2) for administration to an animal owned by him or a member
14 of his household.

15 Sec. 17.12.030. MANUFACTURE AND SALE. Depressant, hallucinogenic
16 and stimulant drugs may be manufactured, compounded, processed, pos-
17 sessed, sold or otherwise disposed of by the following persons acting
18 in the ordinary and authorized course of their business:

19 (1) a manufacturer, compounder or processor, operating in
20 conformance with the laws of this state relating to the manufacture,
21 compounding or processing of drugs, who is regularly engaged in pre-
22 paring pharmaceutical chemicals or prescription drugs for distribution
23 through branch outlets, through wholesale druggists, or by direct ship-
24 ment (a) to pharmacies or to hospitals, clinics, public health agencies
25 or physicians for dispensing by registered pharmacists upon prescrip-
26 tions, or for use by or under the supervision of practitioners licensed
27 in this state to administer drugs in the course of their professional
28 practice; or (B) to laboratories or research or educational institu-
29 tions for their use in research, teaching or chemical analysis;

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

3 (3) a wholesale druggist who maintains his establishment in
4 conformance with state and local laws relating to the manufacture, com-
5 pounding or processing of drugs and is regularly engaged in supplying
6 prescription drugs (A) to pharmacies, or to hospitals, clinics, public
7 health agencies, or physicians for dispensing by registered pharmacists
8 upon prescriptions or for use by or under the supervision of practi-
9 tioners licensed in this state to administer these drugs in the course
10 of their professional practice, or (B) to laboratories or research or
11 educational institutions for their use in research, teaching, or
12 clinical analysis;

13 (4) pharmacies, hospitals, clinics and public health agencies
14 which maintain their establishments in conformance with state and local
15 laws regulating the practice of pharmacy and medicine which are regu-
16 larly engaged in dispensing drugs upon prescriptions of practitioners
17 licensed in this state to administer drugs for patients under the care
18 of the practitioners in the course of their professional practice;

19 (5) a practitioner licensed in this state who may prescribe
20 or administer depressant, hallucinogenic or stimulant drugs, while
21 acting in the course of his professional practice;

22 (6) a person who uses depressant, hallucinogenic or stimulant
23 drugs in research, teaching or chemical analysis and not for sale.

24 Sec. 17.12.040. REGULATIONS. (a) The commissioner may promulgate
25 regulations necessary to carry out the purposes of this chapter and to
26 secure effective enforcement of its provisions.

27 (b) The commissioner shall, by regulation, promulgate a list of
28 drugs which contain barbituric acid or a quantity of any other substance
29 which is habit forming, dangerous, or has a potential for abuse because

1 of its depressant or stimulant effect on the central nervous system or
2 its hallucinogenic effect.

3 (c) The commissioner shall by regulation exempt any depressant,
4 hallucinogenic or stimulant drug from the application of this chapter if
5 he finds that it includes a substance not having a depressant or stimu-
6 lant effect on the central nervous system or a hallucinogenic effect and
7 the substance is present in such combination, quantity, proportion, or
8 concentration as to prevent the substance which does have such an effect
9 from being ingested or absorbed in sufficient amounts or concentrations
10 as to be habit forming, dangerous, or have a potential for abuse because
11 of its depressant or stimulant effect on the central nervous system or
12 its hallucinogenic effect.

13 Sec. 17.12.050. RECORDS. A person engaged in manufacturing, com-
14 pounding, processing, selling, delivering or otherwise disposing of a
15 depressant, hallucinogenic or stimulant drug shall, upon the effective
16 date of this chapter, prepare a complete and accurate record of all
17 stocks of each drug on hand and shall keep the record for three years.
18 If this record has already been prepared in accordance with federal law
19 no additional record is required if all of these records have been
20 retained and are made available to the department upon request. On and
21 after the effective date of this chapter, a person manufacturing, com-
22 pounding, or processing a depressant, hallucinogenic or stimulant drug
23 shall prepare and keep, for not less than three years, a complete and
24 accurate record of the kind and quantity of each drug manufactured,
25 compounded, or processed and the date of the manufacture, compounding,
26 or processing; a person selling, delivering, or otherwise disposing of
27 a depressant, hallucinogenic or stimulant drug shall prepare or obtain,
28 and keep for not less than three years, a complete and accurate record
29 of the kind and quantity of each drug received, sold, delivered, or

1 otherwise disposed of, the name and address from whom it was received
2 and to whom it was sold, delivered, or otherwise disposed of, and the
3 date of the transaction.

4 Sec. 17.12.060. INSPECTION. (a) A person required by sec. 50 of
5 this chapter to prepare or obtain and keep records, and a carrier main-
6 taining records with respect to a shipment containing a depressant,
7 hallucinogenic or stimulant drug, and a person in charge, or having
8 custody, of the records, shall, upon request of an officer or employee
9 designated by the commissioner permit the officer or employee at reason-
10 able times to have access to and copy the records. For the purposes of
11 verification of the records and of the enforcement of this chapter,
12 officers or employees designated by the commissioner are authorized to
13 enter, at reasonable times, a factory, warehouse, establishment, or
14 vehicle in which a depressant, hallucinogenic or stimulant drug is
15 manufactured, compounded, processed, sold, delivered, or otherwise dis-
16 posed of and to inspect, within reasonable limits and in a reasonable
17 manner, the factory, warehouse, establishment, or vehicle, and all
18 pertinent equipment, finished and unfinished material, containers and
19 labeling and to inventory the stock of these drugs and obtain samples
20 of these drugs.

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

24 (c) The provisions of sec. 50 of this chapter and of (a) of this
25 section do not apply to a licensed practitioner with respect to a
26 depressant, hallucinogenic or stimulant drug received, prepared, proces-
27 sed, administered, or dispensed by him in the course of his professional
28 practice, unless the practitioner regularly engages in dispensing these
29 drugs to his patients for which they are charged, either separately or

1 together with charges for other professional services.

2 Sec. 17.12.070. PRESCRIPTION REFILL. No prescription for a
3 depressant, hallucinogenic or stimulant drug may be filled or refilled
4 more than six months after the date on which the prescription was issued
5 and no prescription which is authorized to be refilled may be refilled
6 more than five times. Nothing in this chapter prevents a practitioner
7 from issuing a new prescription for the same drug either in writing or
8 orally. An oral prescription for the drug shall be promptly reduced to
9 writing on a new prescription blank and filed by the pharmacist filling
10 it.

11 Sec. 17.12.080. PERSONS EXEMPTED. The provisions of this chapter
12 restricting the possessing and control of depressant, hallucinogenic
13 and stimulant drugs do not apply to

14 (1) a common carrier or to a warehouseman, while engaged in
15 lawfully transporting or storing these drugs;

16 (2) an employee of a common carrier or warehouseman while
17 acting within the scope of his employment in lawfully transporting or
18 storing these drugs;

19 (3) a public officer or his employee in the performance of
20 his official duties requiring possession or control of these drugs;

21 (4) temporary, incidental possession by an employee or agent
22 of a person lawfully entitled to possession; or

23 (5) temporary, incidental possession by a person whose
24 possession is for the purpose of aiding a public officer in performing
25 his official duties.

26 Sec. 17.12.090. EXEMPTED DRUGS. Depressant, hallucinogenic or
27 stimulant drugs exempted under federal law or under regulations promul-
28 gated by the commissioner are exempted from the application of this
29 chapter.

1 Sec. 17.12.100. EXCEPTIONS AND EXEMPTIONS NOT REQUIRED TO BE
2 NEGATIVED. In a complaint, information, or indictment, and in an
3 action or proceeding brought for the enforcement of any provision of
4 this chapter, it is not necessary to negative any exception, excuse,
5 proviso, or exemption, contained in this chapter, and the burden of
6 proof of an exception, excuse, proviso, or exemption is upon the
7 defendant.

8 Sec. 17.12.110. PENALTIES. (a) A person who violates a provision
9 of this chapter relating to the possession or control of depressant,
10 hallucinogenic and stimulant drugs, when his possession or control is
11 for his own use, is guilty of a misdemeanor and upon conviction is
12 punishable by imprisonment for not more than one year, or by a fine of
13 not more than \$1,000, or by both.

14 (b) A person who violates a provision of this chapter other than
15 one mentioned in (a) of this section, or a person who violates a pro-
16 vision of this chapter relating to the possession or control of depres-
17 sant, hallucinogenic and stimulant drugs, when his possession or control
18 is for the purpose of sale or other disposal to another person, is
19 guilty of a felony and upon conviction is punishable as follows:

20 (1) for the first offense, by imprisonment for not more than
21 25 years, or by a fine of not more than \$20,000, or by both;

22 (2) for the second and subsequent offenses, by imprisonment
23 for any term of years or life, or by a fine of not more than \$25,000,
24 or by both.

25 (c) A person who violates a provision of this chapter by selling
26 or otherwise disposing of a depressant, hallucinogenic or stimulant drug
27 to a person less than 19 years of age is guilty of a felony and upon
28 conviction is punishable by imprisonment for any term of years or life,
29 or by a fine of not more than \$25,000, or by both.

1 Sec. 17.12.120. REHABILITATION. A person convicted of violating
2 a provision of this chapter relating to the possession or control of
3 depressant, hallucinogenic and stimulant drugs, when his possession or
4 control is for his own use may, in lieu of a fine or imprisonment, be
5 committed to the custody of the department for rehabilitative treatment
6 for not more than one year.

7 Sec. 17.12.130. FORFEITURE. A quantity of a drug with respect to
8 which a violation of this chapter has occurred shall be forfeited to
9 the state and upon conclusion of the trial in which the violation is
10 proved shall be destroyed or used by the department for medical or
11 scientific purposes.

12 Sec. 17.12.140. ADDITIONAL REMEDIES. In addition to the remedies
13 provided in this chapter, the commissioner is authorized to apply to
14 the superior court for, and the court shall have jurisdiction upon
15 hearing and for cause shown, to grant a temporary or permanent injunc-
16 tion restraining a person from violating a provision of this chapter
17 irrespective of whether there exists an adequate remedy at law.

18 Sec. 17.12.150. DEFINITIONS. In this chapter

19 (1) "commissioner" means the commissioner of health and
20 welfare;

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

22 (3) "depressant, hallucinogenic or stimulant drug" means:

23 (A) cannabis, psilocybin, dimethyltryptamine, lysergic
24 acid diethylamide, and every other substance having similar
25 physiological effects;

26 (B) a drug which contains barbituric acid or any of the
27 salts of barbituric acid; or a derivative of barbituric acid which
28 has been designated by the commissioner under sec. 40 of this
29 chapter as habit forming or dangerous;

1 (C) a drug which contains amphetamine or any of its
2 optical isomers; or a substance which has been designated by the
3 commissioner as habit forming or dangerous because of its stimu-
4 lant effect on the central nervous system; or

5 (D) a drug which contains any quantity of a substance
6 which the commissioner, after investigation, has found to have,
7 and by regulation designates as having, a potential for abuse
8 because of its depressant or stimulant effect on the central
9 nervous system or its hallucinogenic effect;

10 (4) "cannabis" includes all parts of the plant Cannabis
11 Sativa L., whether growing or not; the seeds thereof; the resin
12 extracted from any part of such plant; and every compound, manufacture,
13 salt, derivative, mixture, or preparation of such plant, its seeds,
14 or resin; but does not include the mature stalks of such plant, fiber
15 produced from such stalks, oil, or cake made from the seeds of such plant,
16 any other compound, manufacture, salt, derivative, mixture or prepara-
17 tion of such mature stalks (except the resin extracted therefrom),
18 fiber, oil, or cake, or the sterilized seed of such plant which is
19 incapable of germination;

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

26 (6) "practitioner" means a physician, dentist, veterinarian,
27 or other person licensed in this state who may prescribe or administer
28 drugs which are subject to this chapter.

29 * Sec. 3, AS 17.10.200 is repealed and re-enacted to read:

1 Sec. 17.10.200. PENALTIES. (a) A person who violates a provi-
2 sion of this chapter relating to the possession or control of narcotic
3 drugs, when his possession or control is for his own use, is guilty
4 of a misdemeanor and upon conviction is punishable by imprisonment for
5 not more than one year, or by a fine of not more than \$1,000, or by
6 both.

7 (b) A person who violates a provision of this chapter other than
8 one mentioned in (a) of this section, or a person who violates a pro-
9 vision of this chapter relating to the possession or control of narcotic
10 drugs, when his possession or control is for the purpose of sale or
11 other disposal to another person, is guilty of a felony and upon convic-
12 tion is punishable as follows:

13 (1) for the first offense, by imprisonment for not more than
14 25 years, or by a fine of not more than \$20,000, or by both;

15 (2) for the second and subsequent offenses, by imprisonment
16 for any term of years or life, or by a fine of not more than \$25,000,
17 or by both.

18 (c) A person who violates a provision of this chapter by selling
19 or otherwise disposing of a narcotic drug to a person less than 19
20 years of age is guilty of a felony and upon conviction is punishable
21 by imprisonment for any term of years or life, or by a fine of not more
22 than \$25,000, or by both.

23 * Sec. 4. AS 17.10 is amended by adding a new section to read:

24 Sec. 17.10.205. REHABILITATION. A person convicted of violating
25 a provision of this chapter relating to the possession or control of
26 narcotic drugs, when his possession or control is for his own use may,
27 in lieu of a fine or imprisonment, be committed to the custody of the
28 department for rehabilitative treatment for not more than one year.

29 * Sec. 5. AS 17.10.230(13) is amended to read:

1 (13) "narcotic drugs" means coca leaves, opium, [CANNABIS,]
2 isonipecaine, amidone, isoamidone, ketobemidone, and every other sub-
3 stance having similar physiological effects:

4 (A) "amidone" means any substance identified chemically
5 as (4-4-Diphenyl-6-Dimethylamino-Heptanone-3), or any salt there-
6 of, by whatever trade name designated;

7 (B) "isoamidone" means any substance identified
8 chemically as (4-4-Dyphenyl-5-Methyl-6-Dimethylamino-hexanon-3),
9 or any salt thereof, by whatever trade name designated;

10 (C) "keto-Bemidone" means any substance identified
11 chemically as (4-(3-Hydroxyphenyl)-1 Methyl-4-piperidyl ethyl
12 ketone hydrochloride), or any salt thereof, by whatever trade
13 name designated;

14 * Sec. 6. AS 17.15.110(3) is amended to read:

15 (3) "narcotic drug" means a narcotic drug defined by the
16 federal internal revenue laws and the regulation issued under them
17 [AND THE FEDERAL MARIHUANA TAX ACT OF 1937 AND THE REGULATIONS ISSUED
18 UNDER IT].
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