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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 or 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 or 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 or 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 or 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 provi-  
9 sion of this chapter relating to the possession or control of  
10 depressant, hallucinogenic or stimulant drugs, when his possession or  
11 control is for his own use upon conviction is punishable as follows:

12           (1) by imprisonment for not more than one year, or by a fine  
13 of not more than \$1,000, or by both, if it is his first conviction for  
14 a violation of a law of this or any other state, of the United States  
15 or of a territory or district of the United States relating to  
16 narcotic, depressant, hallucinogenic or stimulant drugs;

17           (2) by imprisonment for not less than six months nor more  
18 than one year, or by a fine of not more than \$1,000, or by both, if it  
19 is his second conviction for a violation of a law mentioned in (1) of  
20 this subsection;

21           (3) by imprisonment for not less than one year nor more than  
22 five years, or by a fine of not more than \$5,000, or by both, if it is  
23 his third or subsequent conviction for a violation of a law mentioned  
24 in (1) of this subsection.

25           (b) A person who violates a provision of this chapter other than  
26 one mentioned in (a) of this section, or a person who violates a pro-  
27 vision of this chapter relating to the possession or control of depres-  
28 sant, hallucinogenic or stimulant drugs, when his possession or con-  
29 trol is for the purpose of sale or other disposal to another person, is

1 guilty of a felony and upon conviction is punishable as follows:

2 (1) for the first offense, by imprisonment for not less  
3 than one year nor more than 25 years;

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

7 (c) A person who violates a provision of this chapter by selling  
8 or otherwise disposing of a depressant, hallucinogenic or stimulant  
9 drug to a person less than 21 years of age is guilty of a felony and  
10 upon conviction is punishable by imprisonment for any term of years or  
11 life, or by a fine of not more than \$25,000, or by both.

12 (d) A person who, in violation of this chapter, has in his  
13 possession a larger quantity of a drug than a normal person not  
14 addicted to or an habitual user of drugs could reasonably use in a  
15 period of not more than one week shall be presumed to have possession  
16 for the purpose of sale or other disposal to another person.

17 (e) A person charged with the felonious possession of a drug may  
18 be found guilty of the lesser crime of possession for his own use.

19 Sec. 17.12.120. REHABILITATION. A person convicted of violating  
20 a provision of this chapter relating to the possession or control of  
21 depressant, hallucinogenic or stimulant drugs, when his possession or  
22 control is for his own use may, in lieu of a fine or imprisonment, be  
23 committed to the custody of the department for rehabilitative treatment  
24 for not more than one year.

25 Sec. 17.12.130. FORFEITURE. A quantity of a drug with respect to  
26 which a violation of this chapter has occurred shall be forfeited to  
27 the state and upon conclusion of the trial in which the violation is  
28 proved shall be destroyed or used by the department for medical or  
29 scientific purposes.

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

7           Sec. 17.12.150. DEFINITIONS. In this chapter

8           (1) "commissioner" means the commissioner of health and  
9 welfare;

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

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

12           (A) cannabis, psilocybin, dimethyltryptamine, lysergic  
13 acid diethylamide, and every other substance having similar  
14 physiological effects;

15           (B) a drug which contains barbituric acid or any of the  
16 salts of barbituric acid; or a derivative of barbituric acid which  
17 has been designated by the commissioner under sec. 40 of this  
18 chapter as habit forming or dangerous;

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

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

28          (4) "cannabis" includes all parts of the plant Cannabis  
29 Sativa L., whether growing or not; the seeds thereof; the resin

1 extracted from any part of such plant; and every compound, manufacture,  
2 salt, derivative, mixture, or preparation of such plant, its seeds,  
3 or resin; but does not include the mature stalks of such plant, fiber  
4 produced from such stalks, oil, or cake made from the seeds of such  
5 plant, any other compound, manufacture, salt, derivative, mixture or  
6 preparation of such mature stalks (except the resin extracted therefrom,  
7 fiber, oil, or cake, or the sterilized seed of such plant which is  
8 incapable of germination;

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

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

18 \* Sec. 3. AS 17.10.200 is repealed and re-enacted to read:

19 Sec. 17.10.200. PENALTIES. (a) A person who violates a provi-  
20 sion of this chapter relating to the possession or control of narcotic  
21 drugs, when his possession or control is for his own use upon con-  
22 viction is punishable as follows:

23 (1) by imprisonment for not more than one year, or by a fine  
24 of not more than \$1,000, or by both, if it is his first conviction for  
25 a violation of a law of this or any other state, of the United States  
26 or of a territory or district of the United States relating to narcotic,  
27 depressant, hallucinogenic or stimulant drugs;

28 (2) by imprisonment for not less than six months nor more  
29 than one year, or by a fine of not more than \$1,000, or by both, if it

1 is his second conviction for a violation of a law mentioned in (1) of  
2 this subsection;

3 (3) by imprisonment for not less than one year nor more than  
4 five years, or by a fine of not more than \$5,000, or by both, if it is  
5 his third or subsequent conviction for a violation of a law mentioned  
6 in (1) of this subsection.

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  
10 narcotic drugs, when his possession or control is for the purpose of  
11 sale or other disposal to another person, is guilty of a felony and  
12 upon conviction is punishable as follows:

13 (1) for the first offense, by imprisonment for not less than  
14 one year nor more than 25 years.

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 21  
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  
22 more than \$25,000, or by both.

23 (d) A person who, in violation of this chapter, has in his  
24 possession a larger quantity of a drug than a normal person not  
25 addicted to or an habitual user of drugs could reasonably use in a  
26 period of not more than one week shall be presumed to have possession  
27 for the purpose of sale or other disposal to another person.

28 (e) A person charged with the felonious possession of a drug may  
29 be found guilty of the lesser crime of possession for his own use.

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

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

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

8       (13) "narcotic drugs" means coca leaves, opium, [CANNABIS,]  
9 isonipecalne, amidone, isoamidone, ketobemidone, and every other sub-  
10 stance having similar physiological effects [NEITHER CHEMICALLY NOR  
11 PHYSICALLY DISTINGUISHABLE FROM THEM]:

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

15       (B) "isoamidone" means any substance identified  
16 chemically as (4-4-Dyphenyl-5-Methyl-6-Dimethylamino-hexanone-3),  
17 or any salt thereof, by whatever trade name designated;

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

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

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