

Original sponsor: Harris

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1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR 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 or
7 stimulant drugs."

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

9 * Section 1. DECLARATION OF INTENT. (a) The Legislature of the State
10 of Alaska finds that it is essential to the public health and safety to
11 regulate the manufacture, distribution and possession of depressant, hal-
12 lucinogenic 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 the
15 therapeutic benefits of them under medical supervision; to complement
16 and supplement the federal laws and regulations affecting the named
17 activities; to prevent the manufacture and distribution for harmful or il-
18 legitimate purposes; and to place upon manufacturers, wholesalers, licensed
19 compounders of prescriptions, and persons prescribing these drugs a basic
20 responsibility for preventing the improper distribution of these drugs
21 to the extent that the drugs are produced, handled, sold or prescribed by
22 them.

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

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

1 CHAPTER 12. DRUG ABUSE CONTROL.

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

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

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

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

14 (3) for laboratories or research or educational institutions
15 for their use in research, teaching or chemical analysis who have ob-
16 tained a permit from the commissioner; the permit shall name specific
17 drugs allowed, delineate and restrict their use or disposal, name the
18 permittee and set out other requirements and safeguards considered neces-
19 sary by the commissioner to fulfill the requirements of this chapter.

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

24 (1) a manufacturer, compounder or processor, operating in
25 conformance with the laws of this state relating to the manufacture,
26 compounding or processing of drugs, who is regularly engaged in pre-
27 paring pharmaceutical chemicals or prescription drugs for distribution
28 through branch outlets, through wholesale druggists, or by direct ship-
29 ment (a) to pharmacies or to hospitals, clinics, public health agencies

1 or physicians for dispensing by registered pharmacists upon prescrip-
2 tions, or for use by or under the supervision of practitioners licensed
3 in this state to administer drugs in the course of their professional
4 practice; or (b) to laboratories or research or educational institu-
5 tions for their use in research, teaching or chemical analysis;

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

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

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

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

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

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

1 (b) The commissioner may, by regulation, promulgate a list of
2 drugs which contain barbituric acid or a quantity of any other substance
3 which is habit forming, dangerous, or has a potential for abuse because
4 of its depressant or stimulant effect on the central nervous system or
5 its hallucinogenic effect.

6 (c) The commissioner shall by regulation exempt any depressant,
7 hallucinogenic or stimulant drug from the application of this chapter if
8 he finds that it includes a substance not having a depressant or stimu-
9 lant effect on the central nervous system or a hallucinogenic effect and
10 the substance is present in such combination, quantity, proportion, or
11 concentration as to prevent the substance which does have such an effect
12 from being ingested or absorbed in sufficient amounts or concentrations
13 as to be habit forming, dangerous, or have a potential for abuse because
14 of its depressant or stimulant effect on the central nervous system or
15 its hallucinogenic effect. However, no depressant, hallucinogenic or
16 stimulant drug listed as dangerous by the Secretary of Health and Wel-
17 fare of the United States, whether defined by statute or regulation may
18 be exempted from state regulation.

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

1 accurate record of the kind and quantity of each drug manufactured,
2 compounded, or processed and the date of the manufacture, compounding,
3 or processing; a person selling, delivering, or otherwise disposing of
4 a depressant, hallucinogenic or stimulant drug shall prepare or obtain,
5 and keep for not less than three years, a complete and accurate record
6 of the kind and quantity of each drug received, sold, delivered, or
7 otherwise disposed of, the name and address from whom it was received
8 and to whom it was sold, delivered, or otherwise disposed of, and the
9 date of the transaction.

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

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

1 (c) The provisions of sec. 50 of this chapter and of (a) of this
2 section do not apply to a licensed practitioner with respect to a
3 depressant, hallucinogenic or stimulant drug received, prepared, proces-
4 sed, administered, or dispensed by him in the course of his professional
5 practice, unless the practitioner regularly engages in dispensing these
6 drugs to his patients for which they are charged, either separately or
7 together with charges for other professional services.

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

17 Sec. 17.12.080. PERSONS EXEMPTED. The provisions of this chapter
18 restricting the possessing and control of depressant, hallucinogenic
19 or stimulant drugs do not apply to

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

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

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

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

29 (5) temporary, incidental possession by a person whose

1 possession is for the purpose of aiding a public officer in performing
2 his official duties.

3 Sec. 17.12.090. EXEMPTED DRUGS. Depressant, hallucinogenic or
4 stimulant drugs exempted under federal law or under regulations promul-
5 gated by the commissioner are exempted from the application of this
6 chapter.

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

13 Sec. 17.12.110. PENALTIES. (a) A person who violates a provi-
14 sion of this chapter relating to the possession or control of depressant,
15 hallucinogenic or stimulant drugs, when his possession or control is
16 for his own use upon conviction is punishable as follows:

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

22 (2) by imprisonment for not less than one year or by a fine
23 of not more than \$5,000, or by both, if it is his second conviction
24 for a violation of a law mentioned in (1) of this subsection;

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

29 (b) A person who violates a provision of this chapter other than

1 one mentioned in (a) of this section, or a person who violates a pro-
2 vision of this chapter relating to the possession or control of depres-
3 sant, hallucinogenic or stimulant drugs, when his possession or control
4 is for the purpose of sale or other disposal to another person, is
5 guilty of a felony and upon conviction is punishable as follows:

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

8 (2) for the second and subsequent offenses, by imprisonment
9 for three years to life, or by a fine of not more than \$25,000, or by
10 both.

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

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

18 Sec. 17.12.120. REHABILITATION. A person convicted of violating
19 a provision of this chapter relating to the possession or control of
20 depressant, hallucinogenic or stimulant drugs, when his possession or
21 control is for his own use may, in lieu of a fine or imprisonment, be
22 committed to the custody of the department for rehabilitative treatment
23 for not more than one year, if it is his first or second conviction.
24 If it is his third or subsequent conviction he may be committed to the
25 custody of the department for rehabilitative treatment for not more
26 than five years.

27 Sec. 17.12.130. FORFEITURE. A quantity of a drug with respect to
28 which a violation of this chapter has occurred shall be forfeited to
29 the state and upon conclusion of the trial in which the violation is

1 proved shall be destroyed or used by the department for medical or
2 scientific purposes.

3 Sec. 17.12.135. AUTHORITY. (a) The following may be seized with-
4 out warrant by an authorized agent of the department when he has reason-
5 able grounds to believe it is

6 (1) a depressant or stimulant drug with respect to which a
7 prohibited act within the meaning of sec. 10 of this chapter has
8 occurred,

9 (2) a drug that is a counterfeit,

10 (3) a container of the depressant or stimulant drugs or a
11 counterfeit drug,

12 (4) equipment used in manufacturing, compounding, or pro-
13 cessing a depressant or stimulant drug with respect to which drug a
14 prohibited act within the meaning of sec. 10 of this chapter has
15 occurred,

16 (5) a punch, die, plate, stone, labeling, container or other
17 thing used or designed for use in making a counterfeit drug, or

18 (6) a conveyance being used to transport, carry or hold a
19 depressant or stimulant drug with respect to which a prohibited act with-
20 in the meaning of sec. 10 of this chapter has occurred.

21 (b) As used in (a) of this section, "conveyance" includes every
22 description of vehicle, vessel, aircraft, or other contrivance used, or
23 capable of being used as a means of transportation on land, in water,
24 or through the air.

25 (c) When an article, equipment, conveyance, or other thing is
26 seized under (a) of this section the commissioner shall, within five
27 days, cause to be filed in the district court in whose jurisdiction
28 the merchandise is seized or detained a complaint for condemnation of
29 the merchandise as provided in this section. The proceedings shall be

1 brought in the name of the state by the prosecuting attorney of the
2 judicial district in which the article was seized, and the complaint
3 shall be verified by an authorized agent of the state in a manner re-
4 quired by the law of this state. The complaint shall describe the
5 merchandise, state its location, state the name of the person in actual
6 possession, state the name of the owner, if known to the authorized
7 agent of the state, allege the essential elements of the violation
8 which is claimed to exist, and shall conclude with a prayer of due
9 process to enforce the forfeiture. Upon the filing of the complaint,
10 the court shall promptly cause process to issue to the state police
11 officer in that judicial district, commanding him to seize the goods
12 described in the complaint, and to hold them for further order of the
13 court. The police officer shall at the time of seizure, serve a copy
14 of the process upon the owner of the merchandise. This service may be
15 made according to the rules governing the service of civil process in
16 this state. At the expiration of 20 days after the seizure, if no
17 claimant has appeared to defend the complaint, the court shall order
18 the police officer to dispose of the seized merchandise.

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

27 (e) An article, equipment, conveyance or other thing condemned
28 under this section shall, after entry of the decree, be disposed of by
29 destruction or sale as the court may, in accordance with the provisions

1 of this section, direct and the proceeds, if sold, less the legal costs
2 and charges, shall be paid into the general fund. The article, equip-
3 ment, or other thing shall not be sold under a decree contrary to pro-
4 visions of this chapter. Whenever in a proceeding under this section
5 the condemnation of equipment or a conveyance or other thing (other than
6 a drug) is decreed, the court shall allow the claim of any claimant, to
7 the extent of the claimant's interest, for remission or mitigation of
8 a forfeiture if the claimant proves to the satisfaction of the court
9 that, (1) he has not committed or caused to be committed a prohibited
10 act referred to in (a) of this section and has no interest in any drug
11 referred to in (a) of this section, (2) he has an interest in the
12 equipment or other thing as owner or lienor or otherwise, acquired by
13 him in good faith, and (3) he at no time had any knowledge or reason to
14 believe that the equipment, or conveyance or other thing was being or
15 would be used in, or to facilitate, the violation of the laws of this
16 state relating to depressant or stimulant drugs or counterfeit drugs.

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

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

27 Sec. 17.12.150. DEFINITIONS. In this chapter

28 (1) "commissioner" means the commissioner of health and
29 welfare;

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

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

3 (A) cannabis, psilocybin, dimethyltryptamine, lysergic
4 acid diethylamide, and every other substance having similar
5 physiological effects;

6 (B) a drug which contains barbituric acid or any of the
7 salts of barbituric acid; or a derivative of barbituric acid which
8 has been designated by the commissioner under sec. 40 of this
9 chapter as habit forming or dangerous;

10 (C) a drug which contains amphetamine or any of its
11 optical isomers; or a substance which has been designated by the
12 commissioner as habit forming or dangerous because of its stimulant
13 effect on the central nervous system; or

14 (D) a drug which contains any quantity of a substance
15 which the commissioner, after investigation, has found to have,
16 and by regulation designates as having, a potential for abuse be-
17 cause of its depressant or stimulant effect on the central nervous
18 system or its hallucinogenic effect;

19 (4) "cannabis" includes all parts of the plant Cannabis
20 Sativa L., whether growing or not; the seeds thereof; the resin ex-
21 tracted from any part of such plant; and every compound, manufacture,
22 salt, derivative, mixture, or preparation of such plant, its seeds, or
23 resin; but does not include the mature stalks of such plant, fiber
24 produced from such stalks, oil, or cake made from the seeds of such
25 plant, any other compound, manufacture, salt, derivative, mixture or
26 preparation of such mature stalks (except the resin extracted there-
27 from), fiber, oil, or cake, or the sterilized seed of such plant which
28 is incapable of germination;

29 (5) "manufacture, compound or process" includes re-packaging

1 or otherwise changing the container, wrapper, or labeling of a drug
2 package in the furtherance of the distribution of the drug from the
3 original place of manufacture to the person who makes final delivery
4 or sale to the ultimate consumer, and "manufacturers, compounders, and
5 processors" refer to persons engaged in these defined activities;

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

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

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

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

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

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

27 (b) A person who violates a provision of this chapter other than
28 one mentioned in (a) of this section, or a person who violates a pro-
29 vision of this chapter relating to the possession or control of

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

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

6 (2) for the second and subsequent offenses, by imprisonment
7 for three years to life, or by a fine of not more than \$25,000, or by
8 both.

9 (c) A person who violates a provision of this chapter by selling
10 or otherwise disposing of a narcotic drug to a person less than 21
11 years of age is guilty of a felony and upon conviction is punishable
12 by imprisonment for five years to life, or by a fine of not more than
13 \$25,000, or by both.

14 (d) A person charged with the felonious possession of a drug may
15 be found guilty of the lesser crime of possession for his own use.

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

17 Sec. 17.10.205. REHABILITATION. A person convicted of violating
18 a provision of this chapter relating to the possession or control of
19 narcotic drugs, when his possession or control is for his own use may,
20 in lieu of a fine or imprisonment, be committed to the custody of the
21 Department of Health, Welfare and Education for rehabilitative treat-
22 ment for not more than one year, if it is his first or second conviction.
23 If it is his third or subsequent conviction he may be committed to the
24 custody of the Department of Health, Welfare and Education for re-
25 habilitative treatment for not more than five years.

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

27 (13) "narcotic drugs" means coca leaves, opium, [CANNABIS,]
28 isonipeaine, amidone, isoamidone, ketobemidone, and every other sub-
29 stance having similar physiological effects [NEITHER CHEMICALLY NOR

1 **PHYSICALLY DISTINGUISHABLE FROM THEM]:**

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

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

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

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

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