

Introduced: 1/28/80  
Referred: Health, Education &  
Social Services and Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 628

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act consolidating and revising the laws relating  
7 to drug abuse and prohibitions; and providing for an  
8 effective date."

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

10 \* Section 1. DECLARATION OF LEGISLATIVE PURPOSE. (a) The purposes of  
11 this Act are to consolidate and revise Alaska's drug laws patterned after  
12 the Uniform Controlled Substances Act and the Federal Controlled Substances  
13 Act of 1970 and to enact uniform penalty provisions in conformity with the  
14 1978 revision of Alaska's criminal code in order to more effectively combat  
15 illicit trafficking in controlled substances.

16 (b) Two distinct, but interrelated, concerns are addressed in this  
17 Act. The first concern is the detrimental effect on public safety created  
18 through illicit trafficking in and use of drugs. A second, but equally  
19 important, concern is the effect on public health created by the use and  
20 abuse of drugs. It is the intent of the legislature that, in addressing  
21 public safety concerns, uniform classification and penalty provisions be  
22 enacted which adopt an approach reflecting law enforcement problems unique  
23 to Alaska. It is also the intent of the legislature that in addressing  
24 public health concerns, a statutory scheme be enacted which is patterned  
25 after federal law and that the legitimate manufacture, distribution, prescrip-  
26 tion, and dispensing of controlled substances be subject to a regulatory  
27 scheme regarding registration, record keeping, order forms, and prescription  
28 requirements that is identical to that provided for under federal law.

29 \* Sec. 2. AS 11 is amended by adding a new chapter to read:

1 CHAPTER 71. OFFENSES RELATING TO CONTROLLED SUBSTANCES.

2 Sec. 11.71.010. PROMOTING A CONTROLLED SUBSTANCE IN THE FIRST  
3 DEGREE. (a) Except as authorized in AS 17.30, a person commits the  
4 crime of promoting a controlled substance in the first degree if he

5 (1) delivers a schedule I controlled substance to a person  
6 under 18 years of age who is at least three years younger than he; or

7 (2) engages in a continuing criminal enterprise.

8 (b) For purposes of this section, a person is engaged in a  
9 "continuing criminal enterprise" if

10 (1) he commits a violation of this chapter which is punish-  
11 able as a felony; and

12 (2) that violation is a part of a continuing series of  
13 violations of this chapter

14 (A) which he undertakes in concert with five or more  
15 other persons with respect to whom he occupies a position of  
16 organizer, supervisor, or any other position of management; and

17 (B) from which he obtains substantial income or  
18 resources.

19 (c) Promoting a controlled substance in the first degree is an  
20 unclassified felony and is punishable as provided in AS 12.55.

21 Sec. 11.71.020. PROMOTING A CONTROLLED SUBSTANCE IN THE SECOND  
22 DEGREE. (a) Except as authorized in AS 17.30, a person commits the  
23 crime of promoting a controlled substance in the second degree if he

24 (1) manufactures or delivers a schedule I controlled  
25 substance or possesses a schedule I controlled substance with intent  
26 to manufacture or deliver; or

27 (2) delivers a schedule II or III controlled substance to a  
28 person under 18 years of age who is at least three years younger than  
29 he.

1 (b) Promoting a controlled substance in the second degree is a  
2 class A felony.

3 Sec. 11.71.030. PROMOTING A CONTROLLED SUBSTANCE IN THE THIRD  
4 DEGREE. (a) Except as authorized in AS 17.30, a person commits the  
5 crime of promoting a controlled substance in the third degree if he

6 (1) manufactures or delivers a schedule II or III controlled  
7 substance or possesses a schedule II or III controlled substance with  
8 intent to manufacture or deliver;

9 (2) delivers a schedule IV or V controlled substance or  
10 marijuana to a person under 18 years of age who is at least three  
11 years younger than he; or

12 (3) being 18 years of age or older, knowingly possesses a  
13 schedule I or II controlled substance within the grounds of a public  
14 or private elementary, junior high, or secondary school.

15 (b) It is an affirmative defense to a prosecution under (a)(3)  
16 of this section that at the time of the possession the school was  
17 closed to any organized activity involving persons under 18 years of  
18 age. Nothing in this subsection precludes a prosecution under AS  
19 11.71.040(a)(2).

20 (c) Promoting a controlled substance in the third degree is a  
21 class B felony.

22 Sec. 11.71.040. PROMOTING A CONTROLLED SUBSTANCE IN THE FOURTH  
23 DEGREE. (a) Except as authorized in AS 17.30, a person commits the  
24 crime of promoting a controlled substance in the fourth degree if he

25 (1) manufactures or delivers a schedule IV or V controlled  
26 substance or marijuana or possesses a schedule IV or V controlled  
27 substance or marijuana with intent to manufacture or deliver;

28 (2) knowingly possesses a schedule I or II controlled  
29 substance;

1 (3) being 18 years of age or older, knowingly possesses a  
2 schedule III, IV or V controlled substance or marijuana within the  
3 grounds of a public or private elementary, junior high, or secondary  
4 school;

5 (4) knowingly possesses one pound or more of marijuana  
6 under any circumstances;

7 (5) sells or offers for sale an intoxicating liquor in an  
8 area where a local option election has made these activities illegal,  
9 and

10 (A) has previously been convicted under AS 11.71.-  
11 050(a)(3);

12 (B) has engaged in conduct demonstrating an intent to  
13 sell or offer for sale intoxicating liquor to more than one  
14 person; or

15 (C) the sale or offer for sale was made to a person  
16 under 19 years of age or to an intoxicated person;

17 (6) knowingly keeps or maintains any store, shop, warehouse,  
18 dwelling, building, vehicle, boat, aircraft, or other structure or  
19 place which is used for keeping or selling controlled substances in  
20 violation of this chapter or AS 17.30;

21 (7) makes, delivers, or possesses any punch, die, plate,  
22 stone, or other thing designed to print, imprint, or reproduce the  
23 trademark, trade name, or other identifying mark, imprint, or device  
24 of another or any likeness of any of the foregoing upon any drug, drug  
25 container, or labeling so as to render the drug a counterfeit substance;  
26 or

27 (8) obtains possession of a controlled substance by deception

28 (b) It is an affirmative defense to a prosecution under (a)(3)  
29 of this section that at the time of the possession the school was closed

1 to any organized activity involving persons under 18 years of age.  
2 Nothing in this subsection precludes a prosecution under (a)(4) of  
3 this section or under AS 11.71.050(a)(1) or AS 11.71.060(a)(1) or (3).

4 (c) Promoting a controlled substance in the fourth degree is a  
5 class C felony.

6 Sec. 11.71.050. PROMOTING A CONTROLLED SUBSTANCE IN THE FIFTH  
7 DEGREE. (a) Except as authorized in AS 17.30, a person commits the  
8 crime of promoting a controlled substance in the fifth degree if he

9 (1) knowingly possesses a schedule III, IV, or V controlled  
10 substance under any circumstances except as otherwise provided in this  
11 chapter;

12 (2) delivers an intoxicating liquor to a person under 19  
13 years of age who is at least three years younger than he;

14 (3) sells or offers to sell an intoxicating liquor in an  
15 area where a local option election has made these activities illegal;

16 (4) uses in the course of the manufacture or distribution  
17 of a controlled substance a registration number which is fictitious,  
18 revoked, suspended, or issued to another person; or

19 (5) furnishes false or fraudulent information in or omits  
20 material information from any application, report, record, or other  
21 document required to be kept or filed under AS 17.30.

22 (b) It is a defense to a prosecution under (a)(2) of this section  
23 that the defendant was the parent or guardian of the person under 19  
24 years of age.

25 (c) Promoting a controlled substance in the fifth degree is a  
26 class A misdemeanor.

27 Sec. 11.71.060. PROMOTING A CONTROLLED SUBSTANCE IN THE SIXTH  
28 DEGREE. (a) Except as authorized in AS 17.30, a person commits the  
29 crime of promoting a controlled substance in the sixth degree if he

1 (1) uses, displays, or possesses marijuana on a public  
2 street or sidewalk or on the premises of a public carrier or business  
3 establishment or in any other public place;

4 (2) knowingly possesses marijuana within his immediate  
5 control while operating a propelled vehicle;

6 (3) being under 19 years of age, knowingly possesses mari-  
7 juana or an intoxicating liquor;

8 (4) fails to make, keep, or furnish any record, notifica-  
9 tion, order form, statement, invoice, or information required under AS  
10 17.30; or

11 (5) refuses entry into any premises for an inspection  
12 authorized under AS 17.30.

13 (b) Promoting a controlled substance in the sixth degree is a  
14 class B misdemeanor.

15 Sec. 11.71.080. PENALTIES UNDER OTHER LAWS. A penalty imposed  
16 for violation of this chapter is in addition to, and not in place of,  
17 any other civil or administrative penalty or sanction otherwise autho-  
18 rized by law.

19 Sec. 11.71.090. BAR TO PROSECUTION. If a violation of this  
20 chapter is a violation of a federal law or the law of another state, a  
21 conviction or acquittal under federal law or the law of another state  
22 for the same act is a bar to prosecution in this state.

23 Sec. 11.71.100. DEFENSE EXEMPTED. In a prosecution for the  
24 knowing possession of a controlled substance under this chapter, it is  
25 not a defense that the substance was possessed in less than a usable  
26 quantity. It is sufficient to support a conviction that there is a  
27 sufficient quantity of the substance to permit proper identification  
28 and the proof of a knowing possession.

29 Sec. 11.71.110. LIABILITY OF PUBLIC SERVANTS. No liability is

1 imposed by this chapter upon a public servant acting within the scope  
2 and authority of his employment.

3 Sec. 11.71.900. DEFINITIONS. As used in this chapter

4 (1) "controlled substance" means a drug, substance, or  
5 immediate precursor included in the schedules in AS 17.30.040 --  
6 17.30.090;

7 (2) "counterfeit substance" means a controlled substance or  
8 the container or labeling of a controlled substance which, without  
9 authorization, bears the trademark, trade name, or other identifying  
10 mark, imprint, number, or device of a manufacturer, distributor, or  
11 dispenser other than the person or persons who in fact manufactured,  
12 distributed, or dispensed the substance and which falsely purports or  
13 is represented to be the product of, or to have been distributed by,  
14 the other manufacturer, distributor, or dispenser;

15 (3) "cocaine" has the meaning ascribed to it in AS 17.30.-  
16 050(c);

17 (4) "deliver" or "delivery" means the actual, constructive,  
18 or attempted transfer from one person to another of a controlled  
19 substance whether or not there is an agency relationship;

20 (5) "drug" has the meaning ascribed to it in AS 17.30.-  
21 500(10);

22 (6) "hashish" means the dried, compressed, resinous product  
23 of the plant (genus) Cannabis;

24 (7) "hashish oil" means the viscous liquid concentrate of  
25 tetrahydrocannabinols extracted from the plant (genus) Cannabis;

26 (8) "immediate precursor" means a substance which is by  
27 statute or regulation designated as the principal compound commonly  
28 used or produced primarily for use, and which is an immediate chemical  
29 intermediary used or likely to be used in the manufacture of a con-

1 trolled substance, the control of which is necessary to prevent,  
2 curtail, or limit manufacture;

3 (9) "intoxicating liquor" includes whiskey, brandy, rum,  
4 gin, wine, ale, porter, beer, and all other spirituous, vinous, malt,  
5 and other fermented or distilled liquors intended for human consumption  
6 and containing more than one per cent alcohol by volume;

7 (10) "manufacture" has the meaning ascribed to it in AS  
8 17.30.500(16);

9 (11) "marijuana" means the leaves, stems, flowers, and  
10 seeds of the plant (genus) Cannabis, whether growing or not; it does  
11 not include the resin or oil extracted from any part of the plant, or  
12 any compound, manufacture, salt, derivative, mixture, or preparation  
13 from the resin or oil, including hashish, hashish oil, and natural or  
14 synthetic tetrahydrocannabinol; it does not include the mature stalks  
15 of the plant, fiber produced from the stalks, oil or cake made from  
16 the seeds of the plant, any other compound, manufacture salt, deriva-  
17 tive, mixture, or preparation of the mature stalks, fiber, oil or  
18 cake, or the sterilized seed of the plant which is incapable of germi-  
19 nation;

20 (12) "schedule I controlled substance" means a controlled  
21 substance included in the schedule in AS 17.30.040;

22 (13) "schedule II controlled substance" means a controlled  
23 substance included in the schedule in AS 17.30.050;

24 (14) "schedule III controlled substance" means a controlled  
25 substance included in the schedule in AS 17.30.060;

26 (15) "schedule IV controlled substance" means a controlled  
27 substance included in the schedule in AS 17.30.070;

28 (16) "schedule V controlled substance" means a controlled  
29 substance included in the schedule in AS 17.30.080.

1 \* Sec. 3. AS 12.30.040(b) is amended to read:

2 (b) Notwithstanding the provisions of (a) of this section, if  
3 the offense a person has been convicted of is murder in the first  
4 degree (as defined in AS 11.41.100), kidnapping (as defined in AS  
5 11.41.300), sexual assault in the first degree (as defined in AS  
6 11.41.410(a)(1) and (2)), robbery in the first degree (as defined in  
7 AS 11.41.500), or promoting a controlled substance in the first degree  
8 (as defined in AS 11.71.010), or an offense that involves the manufac-  
9 ture, delivery, or possession with intent to manufacture or deliver a  
10 schedule I or II controlled substance in violation of AS 11.71.020 or  
11 11.71.030 under circumstances manifesting an intent to distribute the  
12 substance as part of a commercial enterprise [FIRST DEGREE MURDER,  
13 ARMED ROBBERY, KIDNAPPING, OR RAPE (AS DEFINED IN AS 11.15.130)], he  
14 may not be released on bail either before sentencing or pending appeal.

15 \* Sec. 4. AS 12.45 is amended by adding a new section to read:

16 Sec. 12.45.155. LABORATORY REPORT OF CONTROLLED SUBSTANCE. (a)  
17 In a prosecution under AS 11.71.010 -- 11.71.060, a complete copy of  
18 an official laboratory report from the Department of Public Safety or  
19 a laboratory operated by another law enforcement agency is prima facie  
20 evidence of the content, identity, and weight of the substance. The  
21 report must be signed by the person performing the analysis and must  
22 state that the substance which is the basis of the alleged offense has  
23 been weighed and analyzed. It must also state with specificity findings  
24 as to the content, weight, and identity of the substance.

25 (b) A notarized statement executed by the signer of the report  
26 provided for in (a) of this section must be attached to the report.  
27 The statement must set out the identity of the signer and include a  
28 statement that he is an employee of the laboratory issuing the report  
29 and that performing the analysis is a part of his regular duties. The

1 statement must also include an outline of his education, training, and  
2 experience for performing an analysis. The signer shall attest that  
3 scientifically accepted tests were performed with due caution, and  
4 that the evidence was handled in accordance with established and  
5 accepted procedures while in the custody of the laboratory.

6 (c) The prosecuting attorney shall serve a copy of the report on  
7 the attorney of record for the accused, or on the defendant if he has  
8 no attorney, no later than 10 days before a proceeding in which the  
9 report is to be used against the accused. However, at a preliminary  
10 hearing or grand jury proceeding the report may be used without having  
11 been previously served upon the accused.

12 (d) The accused or his attorney may demand the testimony of the  
13 person signing the report, by serving a written demand showing cause,  
14 upon the prosecuting attorney within seven days from receipt of the  
15 report.

16 (e) Any report issued for use under this section must contain  
17 notice of the right of the accused to demand the testimony of the  
18 person signing the report.

19 \* Sec. 5. AS 12.55.035(b)(1) is amended to read:

20 (1) \$75,000 for murder in the first or second degree, [OR]  
21 kidnapping, or promoting a controlled substance in the first degree;

22 \* Sec. 6. AS 12.55.125(b) is amended to read:

23 (b) A defendant convicted of murder in the second degree, [OR]  
24 kidnapping, or promoting a controlled substance in the first degree  
25 shall be sentenced to a definite term of imprisonment of at least five  
26 years but not more than 99 years.

27 \* Sec. 7. AS 12.55.155(c) is amended by adding new paragraphs to read:

28 (15) the defendant is convicted of an offense specified in  
29 AS 11.71 and the offense involved the delivery of a controlled substance

1 under circumstances manifesting an intent to distribute the substance  
2 as part of a commercial enterprise;

3 (16) the defendant is convicted of an offense specified in  
4 AS 11.71 and the offense involved the smuggling of controlled substances  
5 into the state;

6 (17) the defendant is convicted of an offense specified in  
7 AS 11.71 and the offense involved large quantities of a controlled  
8 substance;

9 (18) the defendant is convicted of an offense specified in  
10 AS 11.71 and the offense involved the distribution of a controlled  
11 substance that had been adulterated with a toxic substance.

12 \* Sec. 8. AS 12.55.155(d) is amended by adding new paragraphs to read:

13 (13) the defendant is convicted of an offense specified in  
14 AS 11.71 and the offense involved small quantities of a controlled  
15 substance;

16 (14) the defendant is convicted of an offense specified in  
17 AS 11.71 and the offense involved the distribution of a controlled  
18 substance, other than a schedule I controlled substance, to a personal  
19 acquaintance who is 19 years of age or older for no profit;

20 (15) the defendant is convicted of an offense specified in  
21 AS 11.71 and the offense involved the possession of a small amount of  
22 a controlled substance for personal use in the defendant's home.

23 \* Sec. 9. AS 17 is amended by adding a new chapter to read:

24 CHAPTER 30. CONTROLLED SUBSTANCES ACT.

25 ARTICLE 1. STANDARDS AND SCHEDULES.

26 Sec. 17.30.010. AUTHORITY TO SCHEDULE CONTROLLED SUBSTANCES.

27 (a) The commissioner shall administer this Act and may by regulation  
28 adopted under the Administrative Procedure Act (AS 44.62) add sub-  
29 stances to the schedules in AS 17.30.040 -- 17.30.090. Each addition

1 shall be in accordance with the advice and determination of the Con-  
2 trolled Substances Advisory Committee established in AS 17.30.020. In  
3 making a determination regarding the addition of a substance, the  
4 committee shall assess the danger or probable danger of the substance  
5 by considering the following:

6 (1) the actual or probable abuse of the substance including:

7 (A) its history and current pattern of abuse;

8 (B) the scope, duration, and significance of abuse;

9 (C) the degree of actual or probable detriment which  
10 may result from abuse of the substance;

11 (D) the probable physical and social impact of wide-  
12 spread abuse of the substance;

13 (2) the biomedical hazard of the substance including:

14 (A) its pharmacology: the effects and modifiers of  
15 effects of the substance;

16 (B) its toxicology: the acute and chronic toxicity,  
17 interaction with other substances, whether controlled or not, and  
18 liability to psychological or physiological dependence;

19 (C) its risk to public health and the particular  
20 susceptibility of segments of the population;

21 (3) whether the substance is an immediate precursor of a  
22 substance already controlled under this chapter;

23 (4) the current state of scientific knowledge regarding the  
24 substance;

25 (5) the relationship between the use of the substance and  
26 other criminal activity including:

27 (A) whether persons engaged in illicit trafficking of  
28 the substance are also engaged in other criminal activity;

29 (B) whether the nature and relative profitability of

1 the substance encourages illicit trafficking in the substance;

2 (C) whether the commission of other crimes is one of  
3 the effects of the use of the substance;

4 (D) whether addiction to the substance relates to the  
5 commission of crimes to support the continued use of the sub-  
6 stance.

7 (b) If, after considering the factors enumerated in (a) of this  
8 section, the committee finds that a substance should be added, the  
9 commissioner shall adopt a regulation in accordance with the committee's  
10 findings.

11 (c) The committee shall advise the governor as to the need to  
12 delete or reschedule substances in the schedules in AS 17.30.040 --  
13 17.30.090. In making recommendations regarding a substance, the  
14 committee shall assess the danger or probable danger of the substance  
15 by considering the factors enumerated in (a) of this section.

16 (d) If the committee designates a substance as an immediate  
17 precursor of a controlled substance, substances which are precursors  
18 of the controlled precursor are not subject to control solely because  
19 they are precursors of the controlled precursor.

20 (e) By the 30th day of each legislative session, the commissioner  
21 shall prepare and present to the governor and the legislature a report  
22 discussing the actions of the committee during the preceding year. If  
23 the commissioner has adopted a regulation adding a controlled substance,  
24 the report shall include the committee's findings of fact and other  
25 supporting information it considers appropriate.

26 Sec. 17.30.020. CONTROLLED SUBSTANCES ADVISORY COMMITTEE. (a)  
27 There is created within the department the Controlled Substances  
28 Advisory Committee, consisting of

29 (1) the director of the division of public health;

- 1 (2) the director of the office of drug abuse;
- 2 (3) the commissioner of public safety or his designee;
- 3 (4) the attorney general or his designee;
- 4 (5) a psychiatrist appointed by the governor;
- 5 (6) a physician appointed by the governor;
- 6 (7) a pharmacist appointed by the governor;
- 7 (8) a peace officer appointed by the governor after con-
- 8 sultation with the Alaska Association of Chiefs of Police; and
- 9 (9) a public member appointed by the governor.

10 (b) Members of the committee specified in paragraphs (a)(5)-(9)  
11 of this section serve terms of four years; except that of the members  
12 first appointed, two shall be appointed for terms of two years, two  
13 for terms of three years, and one for a term of four years. Committee  
14 members are not entitled to receive a salary but are entitled to per  
15 diem and travel expenses authorized by law for boards and commissions.

16 (c) The committee shall meet at the call of the commissioner,  
17 but in no event less than twice a year. Five members constitute a  
18 quorum. The committee may adopt bylaws for its proceedings. Before  
19 making a determination regarding the addition of a substance under AS  
20 17.30.010, the committee, together with the commissioner, shall hold  
21 public hearings as provided for under AS 44.62.210.

22 (d) If a substance is added as a controlled substance under  
23 federal law and notice of the designation is given to the department,  
24 or the addition of a substance has been published in the Code of  
25 Federal Regulations, the committee shall, within 60 days, meet and  
26 consider making a corresponding addition in the schedules specified in  
27 AS 17.30.040 -- 17.30.090. If the committee decides not to include  
28 the change, it shall publish the reasons for that decision and afford  
29 all interested parties an opportunity to be heard. Following the

1 hearing, the committee shall announce its final decision.

2 Sec. 17.30.030. NOMENCLATURE. The controlled substances listed  
3 in the schedules in AS 17.30.040 -- 17.30.090 are included by whatever  
4 official, common, chemical, or brand name is designated.

5 Sec. 17.30.040. SCHEDULE I. (a) A substance shall be placed in  
6 schedule I if it is found under AS 17.30.010(a) to have the highest  
7 degree of danger or probable danger.

8 (b) Schedule I includes, unless specifically excepted or listed  
9 in another schedule, any of the following substances whether produced  
10 directly or indirectly by extraction from substances of vegetable  
11 origin, or independently by means of chemical synthesis, or by a  
12 combination of extraction and chemical synthesis:

13 (1) opium and opiate, and any salt, compound, derivative,  
14 or preparation of opium or opiate, excluding apomorphine, dextrorphan,  
15 nalbuphine, naloxone, and naltrexone, and their respective salts, but  
16 including the following:

- 17 (A) raw opium;  
18 (B) opium extracts;  
19 (C) opium fluid extracts;  
20 (D) powdered opium;  
21 (E) granulated opium;  
22 (F) tincture of opium;  
23 (G) codeine;  
24 (H) ethylmorphine;  
25 (I) etorphine hydrochloride;  
26 (J) hydrocodone;  
27 (K) hydromorphone;  
28 (L) metopon;  
29 (M) morphine;

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- (N) oxycodone;
- (O) oxymorphone;
- (P) thebaine;

(2) any salt, compound, derivative, or preparation of a subincluded in (b)(1) of this section which is chemically equivalent or identical to any of the substances referred to in (b)(1) of this section, except that these substances do not include the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw;

(4) concentrate of poppy straw which is the crude extract of poppy straw in either liquid, solid, or powder form which contains the phennanthrine alkaloids of the opium poppy.

(c) Schedule I includes, unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:

- (1) acetylmethadol;
- (2) allylprodine;
- (3) alphacetylmethadol;
- (4) alphameprodine;
- (5) alphasmethadol;
- (6) alphaprodine;
- (7) anileridine;
- (8) benzethidine;
- (9) betacetylmethadol;
- (10) betameprodine;
- (11) betamethadol;

- 1 (12) betaprodine;
- 2 (13) bezitramide;
- 3 (14) clonitazene;
- 4 (15) dextromoramide;
- 5 (16) diampromide;
- 6 (17) diethylthiambutene;
- 7 (18) difenoxin;
- 8 (19) dihydrocodeine;
- 9 (20) dimenoxadol;
- 10 (21) dimepheptanol;
- 11 (22) dimethylthiambutene;
- 12 (23) dioxaphetyl butyrate;
- 13 (24) diphenoxylate;
- 14 (25) dipipanone;
- 15 (26) ethylmethylthiambutene;
- 16 (27) etonitazene;
- 17 (28) etoxeridine;
- 18 (29) fentanyl;
- 19 (30) furethidine;
- 20 (31) hydroxypethidine;
- 21 (32) isomethadone;
- 22 (33) ketobemidone;
- 23 (34) levomethorphan;
- 24 (35) levomoramide;
- 25 (36) levorphanol;
- 26 (37) levophenacymorphan;
- 27 (38) metazocine;
- 28 (39) methadone;
- 29 (40) methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-

1 diphenyl butane;

2 (41) moramide-intermediate, 2-methyl-3-morpholinol,

3 1-diphenylpropane-carboxylic acid;

4 (42) morpheridine;

5 (43) noracymethadol;

6 (44) norlevorphanol;

7 (45) normethadone;

8 (46) norpipanone;

9 (47) pethidine, also known as meperidine;

10 (48) pethidine-intermediate-A, 4-cyano-1-methyl-4-phenyl-  
11 piperidine;

12 (49) pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-  
13 carboxylate;

14 (50) pethidine-intermediate-C, 1-methyl-4-phenyl-piperidine-  
15 4-carboxylic acid;

16 (51) phenadoxone;

17 (52) phenampromide;

18 (53) phenazocine;

19 (54) phenomorphan;

20 (55) phenoperidine;

21 (56) piminodine;

22 (57) piritramide;

23 (58) proheptazine;

24 (59) properidine;

25 (60) propiram;

26 (61) racemethorphan;

27 (62) racemoramide;

28 (63) racemorphan;

29 (64) trimeperidine.

1 (d) Schedule I includes, unless specifically excepted or unless  
2 listed in another schedule, any of the following opium derivatives,  
3 their salts, isomers, and salts of isomers whenever the existence of  
4 these salts, isomers, and salts of isomers is possible within the  
5 specific chemical designation:

- 6 (1) acetorphine;
- 7 (2) acetyldihydrocodeine;
- 8 (3) benzylmorphine;
- 9 (4) codeine methylbromide;
- 10 (5) codeine-n-oxide;
- 11 (6) cyprenorphine;
- 12 (7) desomorphine;
- 13 (8) dihydromorphine;
- 14 (9) drotebanol;
- 15 (10) etorphine, except hydrochloride salt;
- 16 (11) heroin;
- 17 (12) hydromorphinol;
- 18 (13) methyldesorphine;
- 19 (14) methyldihydromorphine;
- 20 (15) morphine methylbromide;
- 21 (16) morphine methylsulfonate;
- 22 (17) morphine-n-oxide;
- 23 (18) myrophine;
- 24 (19) nicocodeine;
- 25 (20) nicomorphine;
- 26 (21) normorphine;
- 27 (22) pholcodine;
- 28 (23) thebacon

29 Sec. 17.30.050. SCHEDULE II. (a) A substance shall be placed

1 in schedule II if it is found under AS 17.30.010(a) to have a degree  
2 of danger or probable danger less than substances listed in schedule  
3 I, but higher than substances listed in schedule III.

4 (b) Schedule II includes, unless specifically excepted or unless  
5 listed in another schedule, any material, compound, mixture, or  
6 preparation, which contains any quantity of the following hallucino-  
7 genic substances, or which contains any of its salts, isomers, or  
8 salts of isomers whenever the existence of such salts, isomers, or  
9 salts of isomers is possible within the specific chemical designation:

10 (1) 4-bromo-2, 5-dimethoxy-amphetamine, also known as 4-  
11 bromo-2,5-dimethoxy-a-methylphenethylamine and 4-bromo-2, 5-DMA;

12 (2) 2,5-dimethoxyamphetamine, also known as 2,5-dimethoxy-  
13 a-methylphenethylamine and 2,5-DMA;

14 (3) 4-methoxyamphetamine, also known as 4-methoxy-a-methy-  
15 lphenethylamine and paramethoxyamphetamine, PMA;

16 (4) 5-methoxy-3,4-methylenedioxy-amphetamine;

17 (5) 4-methyl-2,5-dimethoxy-amphetamine, also known as 4-  
18 methyl-2,5 - dimethoxy-a - methylphenethylamine, "DOM" and  
19 "STP";

20 (6) 3,4-methylenedioxy amphetamine;

21 (7) 3,4,5-trimethoxy amphetamine;

22 (8) bufotenine, also known as 3-(B-dimethylaminoethyl)-5-  
23 hydroxyindole, 3-(2-dimethylaminoethyl)-5-indolol, N, N-dime -thylsero-  
24 toain, 5-hydroxy-N, N-dimethyltryptamine, and mappine;

25 (9) diethyltryptamine, also known as N,N-diethyltryptamine  
26 and DET;

27 (10) dimethyltryptamine, also known as DMT;

28 (11) ibogaine, also known as 7-ethyl-6, 6B, 7,8,9,10,12,  
29 13-octahydro-2-methoxy-6, 9-methano-5H-pyrido [1',2': 1,2] azepino

1 [5,4-b] indole and tabernanthe iboga;

2 (12) lysergic acid diethylamide;

3 (13) mescaline;

4 (14) peyote, meaning all parts of the plant presently  
5 classified botanically as *lophophora williamsii* lemaire, whether  
6 growing or not, the seeds of the plant, any extract from any part of  
7 the plant, and every compound, manufacture, salts, derivative, mixture,  
8 or preparation of the plant, its seeds, or extracts;

9 (15) n-ethyl-3-piperdyl benzilate;

10 (16) n-methyl-3-piperdyl benzilate;

11 (17) psilocybin;

12 (18) psilocyn;

13 (19) ethylamine analog of phencyclidine, also known by some  
14 trade or other names as follows: N-ethyl-1-phenylcyclohexylamine (1-  
15 phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine,  
16 cyclohexamine, PCE;

17 (20) pyrrolidine analog of phencyclidine, also known by  
18 some trade or other names as follows: 1-(1-phenylcyclohexyl)-pyrrolidine  
19 PCPy, PHP;

20 (21) thiophene analog of phencyclidine, also known as 1-[1-  
21 (2-thienyl) cyclohexyl] piperidine and 2-thienyl analog of phencycli-  
22 ndine and TPCP.

23 (c) For purposes of (b) of this section only, the term "isomer"  
24 includes the optical, position and geometric isomers.

25 (d) Schedule II includes cocaine and any compound, derivative,  
26 or preparation of coca leaves produced directly or indirectly by  
27 extraction from coca leaves, or independently by means of chemical  
28 synthesis, or by a combination of extraction and chemical synthesis,  
29 including the isomers, salts, and salts of isomers of cocaine and

1 other derivatives of coca leaves whenever the existance of such isomers  
2 and salts is possible, but does not include decocainized coca leaves  
3 or extractions of coca leaves which do not contain cocaine or ecgonine.

4 (e) Schedule II includes, unless specifically excepted or unless  
5 listed in another schedule, any material, compound, mixture, or  
6 preparation which contains any quantity of the following substances  
7 having a depressant effect on the central nervous system, including  
8 their salts, isomers, and salts of isomers whenever the existence of  
9 these salts, isomers, and salts of isomers is possible within the  
10 specific chemical designation:

11 (1) amobarbital;

12 (2) mecloqualone;

13 (3) methaqualone;

14 (4) pentobarbital;

15 (5) phencyclidine, also known as PCP;

16 (6) phencyclidine immediate precursors

17 (A) 1-phenylcyclohexylamine;

18 (B) 1-piperidinocyclohexanecarbonitrile, also known as

19 PCC;

20 (7) secobarbital.

21 (f) Schedule II includes, unless specifically excepted or unless  
22 listed in another schedule, any material, compound, mixture, or  
23 preparation which contains any quantity of the following substances  
24 having a stimulant effect on the central nervous system:

25 (1) amphetamine, its salts, optical isomers, and salts of  
26 its optical isomers;

27 (2) methamphetamine, its salts, isomers, and salts of its  
28 isomers;

29 (3) phenmetrazine and its salts;

1 (4) methylphenidate.

2 Sec. 17.30.060. SCHEDULE III. (a) A substance shall be placed  
3 in schedule III if it is found under AS 17.30.010(a) to have a degree  
4 of danger or probable danger less than the substances listed in  
5 schedule II but higher than substances listed in schedule IV.

6 (b) Schedule III includes, unless specifically excepted or  
7 unless listed in another schedule, any material, compound, mixture, or  
8 preparation which contains any quantity of the following substances  
9 having a stimulant effect on the central nervous system, including  
10 their salts, isomers whether optical, position, or geometric, and  
11 salts of these isomers whenever the existence of such salts, isomers,  
12 and salts of isomers is possible within the specific chemical designa-  
13 tion:

- 14 (1) benzphetamine;  
15 (2) chlorphentermine;  
16 (3) clortermine;  
17 (4) mazindol;  
18 (5) phendimetrazine.

19 (c) Schedule III includes, unless specifically excepted or  
20 unless listed in another schedule, any material, compound, mixture, or  
21 preparation which contains any quantity of the following substances  
22 having a depressant effect on the central nervous system:

23 (1) any compound, mixture, or preparation containing amobarbital,  
24 secobarbital, or pentobarbital or any salt of any of these  
25 substances combined with one or more other active medicinal ingredients  
26 which are not listed in AS 17.30.040 -- 17.30.090;

27 (2) any suppository dosage form containing amobarbital,  
28 secobarbital, or pentobarbital or any salt of any of these substances  
29 approved by the federal Food and Drug Administration for marketing

1 only as a suppository;

2 (3) any substance which contains any quantity of a deri-  
3 vative of barbituric acid or any salt of these substances;

4 (4) chlorhexadol;

5 (5) glutethimide;

6 (6) lysergic acid;

7 (7) lysergic acid amide;

8 (8) methyprylon;

9 (9) sulfondiethylmethane;

10 (10) sulfonethylmethane;

11 (11) sulfonmethane.

12 (d) Schedule III includes nalorphine.

13 (e) Schedule III includes, unless specifically excepted or  
14 unless listed in another schedule, any material, compound, mixture, or  
15 preparation containing limited quantities of any of the following  
16 narcotic drugs, or any of its salts:

17 (1) not more than 1.8 grams of codeine per 100 milliliters  
18 or not more than 90 milligrams per dosage unit, with an equal or  
19 greater quantity of an isoquinoline alkaloid of opium;

20 (2) not more than 1.8 grams of codeine per 100 milliliters  
21 or not more than 90 milligrams per dosage unit, with one or more  
22 active, nonnarcotic ingredients in recognized therapeutic amounts;

23 (3) not more than 300 milligrams of dihydrocodeinone per  
24 100 milliliters or not more than 15 milligrams per dosage unit, with a  
25 fourfold or greater quantity of an isoquinoline alkaloid of opium;

26 (4) not more than 300 milligrams of dihydrocodeinone per  
27 100 milliliters or not more than 15 milligrams per dosage unit, with  
28 one or more active nonnarcotic ingredients in recognized therapeutic  
29 amounts;

1 (5) not more than 1.8 grams of dihydrocodeine per 100  
2 milliliters or not more than 90 milligrams per dosage unit, with one  
3 or more active nonnarcotic ingredients in recognized therapeutic  
4 amounts;

5 (6) not more than 300 milligrams of ethylmorphine per 100  
6 milliliters or not more than 15 milligrams per dosage unit, with one  
7 or more active, nonnarcotic ingredients in recognized therapeutic  
8 amounts;

9 (7) not more than 500 milligrams of opium per 100 millil-  
10 liters or per 100 grams or not more than 25 milligrams per dosage  
11 unit, with one or more active, nonnarcotic ingredients in recognized  
12 therapeutic amounts;

13 (8) not more than 50 milligrams of morphine per 100 milli-  
14 liters or per 100 grams, with one or more active, nonnarcotic ingredi-  
15 ents in recognized therapeutic amounts.

16 (f) Schedule III includes hashish, hashish oil, and tetrahy-  
17 drocannabinols.

18 Sec. 17.30.070. SCHEDULE IV. (a) A substance shall be placed  
19 in schedule IV if it is found under AS 17.30.010(a) to have a degree  
20 of danger or probable danger less than the substances listed in schedule  
21 III, but higher than the substances listed in schedule V.

22 (b) Schedule IV includes, unless specifically excepted or unless  
23 listed in another schedule, any material, compound, mixture, or  
24 preparation which contains any quantity of the following substances,  
25 including their salts, isomers and salts of isomers whenever the ex-  
26 istence of such salts, isomers, and salts of isomers is possible  
27 within the specific chemical designation:

28 (1) barbital;

29 (2) chloral betaine;

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- (3) chloral hydrate;
- (4) chlordiazepoxide;
- (5) clonazepam;
- (6) clorazepate;
- (7) diazepam;
- (8) ethchlorvynol;
- (9) ethinamate;
- (10) flurazepam;
- (11) lorazepan;
- (12) mebutamate;
- (13) meprobamate;
- (14) methohexital;
- (15) methylphenobarbital, also known as mephobarbital;
- (16) oxazepam;
- (17) paraldehyde;
- (18) petrichloral;
- (19) pentobarbital;
- (20) prazepam.

(c) Schedule IV includes any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers whether optical, position, or geometric, and salts of these isomers, whenever the existence of these salts, isomers, and salts of isomers is possible: fenfluramine.

(d) Schedule IV includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers whether optical, position, or geometric, and salts of these isomers whenever the existence of these salts, isomers,

1 and salts of isomers is possible within the specific chemical designa-  
2 tion:

- 3 (1) diethylpropion;  
4 (2) phentermine;  
5 (3) pemoline, including organometallic complexes and chelates  
6 of this substance.

7 (e) Schedule IV includes, unless specifically excepted or unless  
8 listed in another schedule, any material, compound, mixture or prepara-  
9 tion which contains any quantity of the following substances, including  
10 their salts:

- 11 (1) dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-  
12 diphenyl-3-methyl-2-propionoxybutane);  
13 (2) phentazocine.

14 (f) Schedule IV includes, unless specifically excepted or unless  
15 listed in another schedule, any material, compound, mixture, or pre-  
16 paration containing limited quantities of any of the following sub-  
17 stances or any salts of these substances: not more than 1 milligram  
18 of difenoxin and not less than 25 micrograms of atropine sulfate per  
19 dosage unit.

20 Sec. 17.30.080. SCHEDULE V. (a) A substance shall be placed in  
21 schedule V if it is found under AS 17.30.010(a) to have a degree of  
22 danger or probable danger less than substances listed in schedule IV,  
23 but higher than substances listed in schedule VI.

24 (b) Schedule V includes any compound, mixture, or preparation  
25 containing any of the following limited quantities of narcotic drugs  
26 or their salts which includes one or more nonnarcotic active medicinal  
27 ingredients in sufficient proportion to confer upon the compound,  
28 mixture, or preparation valuable medicinal qualities other than those  
29 possessed by schedule I substances alone:

1 (1) not more than 200 milligrams of codeine per 100 milli-  
2 liters or per 100 grams;

3 (2) not more than 100 milligrams of dihydrocodeine per 100  
4 milliliters or per 100 grams;

5 (3) not more than 100 milligrams of ethylmorphine per 100  
6 milliliters or per 100 grams;

7 (4) not more than 2.5 milligrams of diphenoxylate and not  
8 less than 25 micrograms of atropine sulfate per dosage unit;

9 (5) not more than 100 milligrams of opium per 100 milli-  
10 liters or per 100 grams;

11 (6) not more than 0.5 milligrams of difenoxin and not less  
12 than 25 micrograms of atropine sulfate per dosage unit.

13 (c) Schedule V includes loperamide.

14 Sec. 17.30.090. SCHEDULE VI. (a) A substance shall be placed  
15 in schedule VI if it is found under AS 17.30.010(a) to have the lowest  
16 degree of danger or probable danger.

17 (b) Schedule VI includes:

18 (1) marijuana;

19 (2) intoxicating liquors.

20 Sec. 17.30.095. EXEMPTED DRUGS. A controlled substance the  
21 manufacture, distribution, dispensing, or possession of which is  
22 explicitly exempt from criminal penalty under federal law is exempt  
23 from the application of this chapter and AS 11.71. This exemption  
24 includes any substances which may, under the federal Food, Drug, and  
25 Cosmetic Act (21 U.S.C. sec. 301 et seq.) be lawfully sold over the  
26 counter without a prescription.

27 **ARTICLE 2. REGULATION OF MANUFACTURE, DISTRIBUTION,**  
28 **PRESCRIPTION, AND DISPENSING OF CONTROLLED SUBSTANCES.**

29 **Sec. 17.30.150. REGULATIONS.** The commissioner shall adopt regu-

1 lations under the Administrative Procedure Act (AS 44.62) which are  
2 necessary for the administration of this chapter, and may charge  
3 reasonable fees relating to the registration and control of the manu-  
4 facture, distribution, and dispensing of controlled substances within  
5 the state.

6 Sec. 17.30.160. REGISTRATION REQUIREMENTS. (a) A person who  
7 manufactures, distributes, dispenses, or conducts research with a  
8 controlled substance within the state or who proposes to engage in the  
9 manufacture, distribution, or dispensing of a controlled substance  
10 within the state, shall annually register with the commissioner in  
11 accordance with regulations adopted under AS 17.30.150.

12 (b) Persons registered under this chapter to manufacture,  
13 distribute, dispense, or conduct research with controlled substances  
14 may possess, manufacture, distribute, dispense, or conduct research  
15 with those substances to the extent authorized by their registration  
16 and in conformity with the other provisions of this chapter.

17 (c) The following persons need not register under this chapter:

18 (1) an agent or employee of a registered manufacturer,  
19 distributor, dispenser, or researcher of a controlled substance if the  
20 possession is incidental to the agent's or employee's acting in the  
21 usual course of his business or employment;

22 (2) a common or contract carrier or warehouseman, or his  
23 employee, whose possession of a controlled substance is in the usual  
24 course of his business or employment;

25 (3) a person in possession of a controlled substance under  
26 a lawful order of a registered practitioner or in lawful possession of  
27 a schedule V substance.

28 (d) The commissioner may, by regulation, waive the requirement  
29 for registration of certain manufacturers, distributors, or dispensers

1 if he finds it consistent with the public health and safety.

2 (e) A separate registration is required for each principal place  
3 of business or professional practice where the applicant manufactures,  
4 distributes, or dispenses controlled substances.

5 (f) The commissioner may inspect the establishment of a regis-  
6 trant or applicant for registration in accordance with regulations  
7 adopted by the commissioner.

8 Sec. 17.30.170. REGISTRATION. (a) The commissioner shall  
9 register an applicant to manufacture, distribute, or dispense controlled  
10 substances listed in the schedules in AS 17.30.040 -- 17.30.090 unless  
11 he finds that the registration would be inconsistent with the public  
12 interest. In determining the public interest, the commissioner shall  
13 consider the following factors:

14 (1) maintenance of effective controls against diversion of  
15 controlled substances into other than legitimate medical, scientific,  
16 or industrial channels;

17 (2) compliance with applicable state and local law;

18 (3) any conviction of the applicant under federal or state  
19 laws relating to controlled substances;

20 (4) past experience in the manufacture or distribution of  
21 controlled substances and the existence in the applicant's establish-  
22 ment of effective controls against diversion of controlled substances  
23 into other than legitimate medical, scientific, or industrial channels;

24 (5) furnishing by the applicant of false information in an  
25 application filed under this chapter;

26 (6) suspension or revocation of the applicant's federal  
27 registration to manufacture, distribute, or dispense controlled sub-  
28 stances as authorized by federal law; and

29 (7) any other factors relevant to and consistent with the

1 public health and safety.

2 (b) Practitioners registered under federal law to conduct re-  
3 search with controlled substances shall be issued a registration to  
4 conduct research with these substances within the state upon furnish-  
5 ing the commissioner with evidence of the federal registration.

6 (c) Compliance by manufacturers and distributors with the pro-  
7 visions of federal law pertaining to registration requirements, exclud-  
8 ing fees, entitles them to be registered under this chapter.

9 Sec. 17.30.180. REVOCATION AND SUSPENSION OF REGISTRATION. (a)  
10 A registration under AS 17.30.170 to manufacture, distribute, dis-  
11 pense, or conduct research with a controlled substance may be suspended  
12 or revoked by the commissioner upon a finding that the registrant:

13 (1) has furnished false or fraudulent material information  
14 in an application filed under this chapter;

15 (2) has been convicted of a felony under state or federal  
16 law relating to a controlled substance; or

17 (3) has had his federal registration to manufacture, dis-  
18 tribute, dispense, or conduct research with controlled substances  
19 suspended or revoked.

20 (b) The commissioner may limit the revocation or suspension of a  
21 registration to the particular controlled substance with respect to  
22 which grounds for revocation or suspension exist.

23 (c) If the commissioner suspends or revokes a registration, all  
24 controlled substances owned or possessed by the registrant at the time  
25 of suspension or the effective date of the revocation order may be  
26 placed under seal and placed in the custody of the Department of Public  
27 Safety subject only to the orders and decrees of a court having juris-  
28 diction over the property. No disposition may be made of substances  
29 under seal until the time for taking an appeal has elapsed or until

1 all appeals have been concluded unless a court, upon application,  
2 orders the sale of perishable substances and the deposit of the pro-  
3 ceeds of the sale with the court. Upon a revocation order becoming  
4 final, all controlled substances are forfeited to the state.

5 (d) The commissioner shall promptly notify the Drug Enforcement  
6 Administration of all orders suspending or revoking registrations and  
7 of all forfeitures of controlled substances.

8 Sec. 17.30.190. ORDER TO SHOW CAUSE. (a) Before denying, sus-  
9 pending, or revoking a registration, or refusing a renewal of a regis-  
10 tration, the commissioner shall serve upon the applicant or registrant  
11 an order to show cause why a registration should not be denied, revoked,  
12 or suspended, or why a renewal should not be refused. The order to  
13 show cause shall contain a statement of the basis for it and shall re-  
14 quire the applicant or registrant to appear before the commissioner at  
15 a time and place not less than 30 days after the date of service of  
16 the order. In the case of a refusal of renewal of registration the  
17 show cause order must be served not later than 30 days before the ex-  
18 piration of the registration. These proceedings must be conducted in  
19 accordance with procedures for administrative adjudication under AS  
20 44.62.330 -- 44.62.630 without regard to criminal prosecution or other  
21 proceeding. Proceedings to refuse renewal of registration do not  
22 abate the existing registration which remains in effect pending the  
23 outcome of the administrative hearing.

24 (b) The commissioner may, without an order to show cause, suspend  
25 a registration simultaneously with the institution of proceedings un-  
26 der AS 17.30.180 if he finds that there is an imminent danger to the  
27 public health or safety which warrants this action. The suspension  
28 continues in effect until the conclusion of the proceedings, including  
29 judicial review of the proceedings, unless sooner withdrawn by the com-

1 missioner or dissolved by a court of competent jurisdiction.

2 Sec. 17.30.200. RECORDS OF REGISTRANTS. Persons registered to  
3 manufacture, distribute, dispense, or conduct research with controlled  
4 substances under this chapter shall keep records and maintain invento-  
5 ries in conformance with the record-keeping and inventory requirements  
6 of federal law.

7 Sec. 17.30.210. ORDER FORMS: PRESCRIPTIONS. (a) Controlled  
8 substances may be distributed by one registrant to another registrant  
9 only if the distribution is in accordance with federal requirements  
10 for order forms.

11 (b) No controlled substance may be dispensed by a practitioner  
12 except in accordance with federal requirements regarding prescriptions  
13 for controlled substances.

14 (c) If a controlled substance is classified in a schedule set  
15 out in AS 17.30.040 -- 17.30.090, or through regulation adopted in  
16 accordance with this chapter, that is different from its corresponding  
17 classification under federal law, the requirements of (a) and (b) of  
18 this section are determined by the classification of the substance un-  
19 der federal law.

20 Sec. 17.30.220. EXCLUSION. For purposes of AS 17.30.150 --  
21 17.30.220, "controlled substance" does not include intoxicating liquors.

22 ARTICLE 3. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS.

23 Sec. 17.30.300. COOPERATIVE ARRANGEMENTS. The commissioner of  
24 public safety shall cooperate with other state agencies and federal  
25 agencies in the discharge of their responsibilities pertaining to  
26 illicit traffic in controlled substances and in suppressing the abuse  
27 of controlled substances. Under this section, the commissioner of  
28 public safety's powers include but are not limited to the following:

29 (1) arranging for the exchange of information among govern-

1 mental officials concerning illicit traffic in and abuse of controlled  
2 substances;

3 (2) coordinating and cooperating in training programs per-  
4 taining to controlled substances at both local and state levels; and

5 (3) cooperating with the Drug Enforcement Administration of  
6 the United States Department of Justice through the establishment of a  
7 centralized unit to accept, catalogue, file, and collect statistics,  
8 including records of persons who have violated the provisions of this  
9 chapter or AS 11.71 within the state and make the information available  
10 for federal, state, and local law enforcement purposes; the commissioner  
11 may not furnish the name or identity of a patient or research subject  
12 whose identity could not be obtained under AS 17.30.350(b).

13 Sec. 17.30.310. FORFEITURES. (a) The following are subject to  
14 forfeiture to the state:

15 (1) any controlled substance which has been manufactured,  
16 distributed, dispensed, or possessed in violation of this chapter or  
17 AS 11.71;

18 (2) raw materials, products, and equipment which are used  
19 or intended for use in manufacturing, distributing, compounding, pro-  
20 cessing, delivering, importing, or exporting a controlled substance in  
21 violation of this chapter or AS 11.71;

22 (3) any property which is used or intended for use as a  
23 container for property described in (1) or (2) of this subsection;

24 (4) any conveyance, including but not limited to aircraft,  
25 vehicles or vessels which have been used to transport or in any manner  
26 to facilitate transportation for purpose of sale or receipt of proper-  
27 ty described in (1) or (2) of this subsection; however,

28 (A) no conveyance is subject to forfeiture under this  
29 section if the owner of the conveyance establishes, by a prepon-

1 derance of the evidence, at a hearing before the court as a trier  
2 of fact that its use in violation of this chapter or AS 11.71 was  
3 committed by another person and that the owner was not a consent-  
4 ing party nor privy to the violation and took all reasonable  
5 means to ensure that the conveyance would not be used, and that  
6 no person who operated it would use it in violation of this  
7 chapter or AS 11.71;

8 (B) a forfeiture of a conveyance encumbered by a bona  
9 fide security interest at the time of seizure is subject to the  
10 interest of the secured party if the secured party establishes,  
11 by a preponderance of the evidence, at a hearing before the court  
12 as a trier of fact that its use in violation of this chapter or  
13 AS 11.71 was committed by another person and that the secured  
14 party was not a consenting party nor privy to the violation and  
15 took all reasonable means to ensure that the conveyance would not  
16 be used and that no person who operated it would use it in  
17 violation of this chapter or AS 11.71;

18 (5) any books, records, and research products and materials,  
19 including formulas, microfilm, tapes, and data which are used in vio-  
20 lation of this chapter or AS 11.71;

21 (6) any money or negotiable instrument derived from activ-  
22 ity prohibited by this chapter or AS 11.71; and

23 (7) any firearm used during or in furtherance of a viola-  
24 tion of this chapter or AS 11.71.

25 (b) Property listed in (a) of this section may be forfeited to  
26 the state either upon conviction of the defendant of a violation of  
27 this chapter or AS 11.71, or upon judgment of a court of competent  
28 jurisdiction in a separate civil proceeding in rem that an item speci-  
29 fied in (a) of this section was used in or in aid of a violation of

1 this chapter or AS 11.71.

2 (c) It is not a defense in an in rem proceeding brought under  
3 this section that a criminal proceeding is pending or has resulted in  
4 a conviction or acquittal for a violation of this chapter or AS 11.71,  
5 or that a criminal proceeding has been dismissed, or that the item has  
6 not been forfeited in any criminal proceeding, or that multiple actions  
7 are pending.

8 (d) Property subject to forfeiture under this section may be  
9 seized by a peace officer upon an order issued by a court having juris-  
10 diction over the property upon a showing of probable cause that the  
11 property is subject to forfeiture under (a) of this section. Seizure  
12 without a court order may be made if

13 (1) the seizure is incident to a valid arrest or a search  
14 under a valid search warrant;

15 (2) the property subject to seizure has been the subject of  
16 a prior judgment in favor of the state in a criminal proceeding or  
17 civil proceeding in rem based upon this chapter or AS 11.71; or

18 (3) there is probable cause that the property was or is  
19 being used in violation of this chapter or AS 11.71 and the property  
20 is easily movable; property seized under this paragraph may not be  
21 held for more than 48 hours or until an order continuing the seizure  
22 may be applied for and issued by a court, whichever is earlier.

23 (e) Property taken or detained under (b) of this section is in  
24 the custody of the Department of Public Safety subject only to the or-  
25 ders and decrees of the court having jurisdiction over the forfeiture  
26 proceedings. If property is seized under this chapter, the Department  
27 of Public Safety may:

28 (1) place the property under seal;

29 (2) remove the property to a place designated by the court;

1 or

2 (3) take custody of the property and remove it to an appro-  
3 priate location for disposition in accordance with law.

4 (f) Within 10 days of any seizure under this section, the state  
5 shall inventory the property seized and its contents and appraise the  
6 value of the items seized.

7 (g) Within 20 days of any seizure under this section, the state  
8 shall, by certified mail, notify any person known to have an interest  
9 in an item with an appraised value of \$500 or more, or who is ascer-  
10 tainable from official registration numbers, licenses or other state,  
11 federal or municipal numbers on the item. Additionally, the state  
12 shall publish notice of forfeiture action of an item valued at \$500 or  
13 more in a newspaper of general circulation in the judicial district in  
14 which the seizure was made, or if no newspaper is published in that  
15 district, in a newspaper published in the state and distributed in  
16 that district, four times during four consecutive calendar weeks, once  
17 during each week. The requirements of this subsection do not apply to  
18 the forfeiture of controlled substances which have been manufactured,  
19 distributed, dispensed, or possessed in violation of this chapter or  
20 AS 11.71, regardless of their value.

21 (h) Upon service or publication of notice of commencement of an  
22 action under this section, a person claiming interest in the property  
23 shall file within 20 days from the service or publication, a notice of  
24 claim setting out the nature of his interest, the date it was acquired,  
25 the consideration paid, and an answer to the state's allegations. If  
26 no claim and answer is filed within the time specified, the property  
27 described in the state's allegation must be ordered forfeited to the  
28 state without further proceedings or showings.

29 (i) Questions of fact or law raised by a notice of claim and

1 answer of any claimant in an action commenced under this section must  
2 be determined by the court sitting without a jury. Such a proceeding  
3 may, in the court's discretion, be held in abeyance until conclusion  
4 of any pending criminal charges against the claimant under this chap-  
5 ter or AS 11.71.

6 (j) A claimant under (h) of this section may at any time petition  
7 for release of a seized item as follows:

8 (1) to a court in which a seizure warrant has been issued;  
9 (2) to a court in which a criminal or civil action alleging  
10 forfeiture of the item has been filed; or

11 (3) before an action is filed, or if no seizure warrant was  
12 issued, to a court in the district in which the violation took place.

13 (k) An item may not be released by the court under (j) of this  
14 section except upon an adequate assurance from the claimant that the  
15 item will remain subject to the court's jurisdiction and within the  
16 constructive custody of the state and

17 (1) a finding that the release is in the best interests of  
18 the state; or

19 (2) the posting of a bond equal to twice the assessed value  
20 of the item or the posting of other valid and equivalent security.

21 (1) A claimant may petition the court for sale of an item before  
22 final disposition. The court shall grant a petition for sale upon a  
23 finding that the sale is in the best interests of the state and the  
24 preservation and maintenance of the item seized. Proceeds from the  
25 sale plus interest to the date of final disposition shall thereafter  
26 be treated as the subject of the forfeiture action.

27 (m) Property forfeited under this section must be disposed of  
28 according to court order. The court may order the Department of Pub-  
29 lic Safety to

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(1) destroy property harmful to the public;

(2) sell the property and use the proceeds for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody, and court costs;

(3) take custody of the property and use it in the enforcement of this chapter or AS 11.71, or transfer it to another agency of the state for a use designated by the court in furtherance of the administration of justice;

(4) take custody of the property and remove it for disposition in accordance with law; or

(5) forward it to the Drug Enforcement Administration for disposition.

(n) Upon a showing that a claimant is entitled to remittance in accordance with the provisions of this section, the court shall order that

(1) if the item may be used for a valid state function, it shall be delivered to the Department of Administration and that department shall remit to the claimant the value of the claimant's interest at the time of seizure; or

(2) the item may be sold at public auction to the highest bidder, the claimant having a right of first refusal, with proceeds used to satisfy the claimant's interest at the time of seizure and the balance deposited in the general fund.

(o) An offender who used an item subject to remission in violation of this chapter or AS 11.71 shall be assessed a fine at least equal to the cost of any lien payment or remittance made by the state plus the reasonable costs of the seizure.

(p) Any controlled substance manufactured, possessed, transferred, sold, or offered for sale in violation of this chapter or AS 11.71 is

1 contraband and must be seized and summarily forfeited to the state.

2 (q) Plants from which controlled substances may be derived and  
3 which have been planted or cultivated in violation of this chapter or  
4 AS 11.71, or which are wild growths, may be seized and summarily for-  
5 feited to the state.

6 Sec. 17.30.320. BURDEN OF PROOF. It is not necessary for the  
7 state to negate an exemption or exception provided for in this chapter  
8 in a complaint, information, indictment or other pleading or at a  
9 trial, hearing, or other proceeding under this chapter or AS 11.71.  
10 The defendant has the burden of proving by a preponderance of the  
11 evidence any exemption or exception claimed by him.

12 Sec. 17.30.330. JUDICIAL REVIEW. All final determinations, find-  
13 ings, and conclusions of the commissioner under this chapter or regu-  
14 lations adopted under it are final decisions of the matters involved.  
15 A person aggrieved by a decision may obtain review of the decision in  
16 the superior court in accordance with AS 44.62.560 -- 44.62.570. A  
17 person is not, however, entitled to a hearing de novo in the superior  
18 court.

19 Sec. 17.30.340. EDUCATION AND RESEARCH. (a) The commissioner  
20 shall carry out educational programs designed to prevent and deter  
21 abuse of controlled substances. In connection with these programs,  
22 the commissioner may:

23 (1) promote better recognition of the problems surrounding  
24 abuse of controlled substances within the regulated industry and among  
25 interested groups and organizations;

26 (2) assist the regulated industry and interested groups and  
27 organizations in contributing to the reduction of abuse of controlled  
28 substances;

29 (3) consult with interested groups and organizations to aid

1 them in solving administrative and organizational problems;

2 (4) evaluate procedures, projects and techniques conducted  
3 or proposed as part of educational programs on abuse of controlled  
4 substances;

5 (5) disseminate the results of research on abuse of con-  
6 trolled substances to promote a better public understanding of the  
7 problems which exist and their solutions; and

8 (6) with the cooperation of the Department of Law, assist  
9 in the education and training of state and local law enforcement  
10 officials in their efforts to prevent illicit traffic in and abuse of  
11 controlled substances.

12 (b) The commissioner shall encourage research on controlled sub-  
13 stances and may:

14 (1) establish methods to assess the effects of controlled  
15 substances and identify and characterize those with potential for  
16 abuse;

17 (2) make studies and undertake research to:

18 (A) develop new or improved approaches, techniques,  
19 systems, equipment and devices to strengthen the enforcement of  
20 this chapter;

21 (B) determine patterns of abuse of controlled sub-  
22 stances and their social effects; and

23 (C) improve methods for preventing, predicting and un-  
24 derstanding the abuse of controlled substances;

25 (3) enter into contracts with public agencies, institutions  
26 of higher education, and private organizations or individuals for con-  
27 ducting research, demonstrations, or special projects which bear  
28 directly on abuse of controlled substances and for related research  
29 and educational activities.

1           Sec. 17.30.350. CONFIDENTIALITY. (a) Results, information, and  
2 evidence received from the Drug Enforcement Administration of the  
3 United States Department of Justice relating to the regulatory functions  
4 of this chapter, including results of inspections conducted by it may  
5 be relied on and acted on by the commissioner in the exercise of his  
6 regulatory functions under this chapter.

7           (b) A practitioner engaged in medical practice or research may  
8 not furnish the name or identity of a patient or research subject to  
9 the commissioner, and the practitioner may not otherwise disclose the  
10 name or identity of an individual that he is obliged to keep confi-  
11 dential unless compelled to disclose it within the context of a crimi-  
12 nal investigation or proceeding.

13                           ARTICLE 4. DEFINITIONS.

14           Sec. 17.30.500. DEFINITIONS. As used in this chapter

15           (1) "administer" means the direct application of a con-  
16 trolled substance, whether by injection, inhalation, ingestion, or any  
17 other means into the body of a patient or research subject by

18                           (A) a practitioner or, in the practitioner's presence,  
19 by his authorized agent, or

20                           (B) the patient or research subject at the direction  
21 and in the presence of a practitioner;

22           (2) "agent" means an authorized person who acts on behalf  
23 of or at the direction of a manufacturer, distributor, or dispenser;  
24 it does not include a common or contract carrier, public warehouseman,  
25 or employee of the carrier or warehouseman;

26           (3) "commissioner" means the commissioner of health and so-  
27 cial services;

28           (4) "committee" means the Controlled Substances Advisory  
29 Committee established in AS 17.30.020;

1 (5) "controlled substance" means a drug, substance, or im-  
2 mediate precursor included in the schedules set out in AS 17.30.040 --  
3 17.30.090;

4 (6) "deliver" or "delivery" means the actual, constructive,  
5 or attempted transfer from one person to another of a controlled sub-  
6 stance whether or not there is an agency relationship;

7 (7) "department" means the Department of Health and Social  
8 Services;

9 (8) "dispense" means to deliver a controlled substance to  
10 an ultimate user or research subject by or under the lawful order of a  
11 practitioner, including the prescribing, administering, packaging, la-  
12 beling, or compounding necessary to prepare the substance for that de-  
13 livery; "dispenser" means a practitioner who dispenses;

14 (9) "distribute" means to deliver other than by administer-  
15 ing or dispensing a controlled substance; "distributor" means a person  
16 who distributes;

17 (10) "drug"

18 (A) means

19 (i) substances recognized as drugs in the official  
20 United States Pharmacopoeia, official Homeopathic Pharmaco-  
21 poeia of the United States, or official National Formulary,  
22 or any supplement to any of these publications;

23 (ii) substances intended for use in the diagnosis,  
24 cure, mitigation, treatment, or prevention of disease in  
25 humans or animals;

26 (iii) substances, other than food, intended to  
27 affect the structure or any function of the body of humans  
28 or animals; and

29 (iv) substances intended for use as a component

1 of any article specified in (i), (ii), or (iii) of this sub-  
2 paragraph;

3 (B) does not include devices or their components,  
4 parts, or accessories;

5 (11) "hashish" means the dried, compressed, resinous product  
6 of the plant (genus) Cannabis;

7 (12) "hashish oil" means the viscous liquid concentrate of  
8 tetrahydrocannabinols extracted from the plant (genus) Cannabis;

9 (13) "immediate precursor" means a substance which is by  
10 statute or regulation designated as the principal compound commonly  
11 used or produced primarily for use, and which is an immediate chemical  
12 intermediary used or likely to be used in the manufacture of a con-  
13 trolled substance, the control of which is necessary to prevent,  
14 curtail, or limit manufacture of that controlled substance;

15 (14) "judicial officer" means a justice of the supreme  
16 court, a judge of the superior court, a district judge, and a magistrate

17 (15) "intoxicating liquor" has the meaning ascribed to it  
18 in AS 11.71.200(9);

19 (16) "manufacture" means

20 (A) the production, preparation, propagation, compound-  
21 ing, conversion, growing, or processing of a controlled substance,  
22 either directly or indirectly by extraction from substances of  
23 natural origin, or independently by means of chemical synthesis,  
24 or by a combination of extraction and chemical synthesis; however,  
25 the growing of less than one pound of marijuana is not manufactur-  
26 ing; and

27 (B) any packaging or labeling of a controlled substance  
28 including but not limited to acts done

29 (i) by a practitioner as an incident to his ad-

1 ministering or dispensing of a controlled substance in the  
2 course of his professional practice; or

3 (ii) by a practitioner, or by his authorized  
4 agent under his supervision, for the purpose of, or as an  
5 incident to, research, teaching, or chemical analysis and  
6 not for sale;

7 (17) "marijuana" has the meaning ascribed to it in AS 11.-  
8 71.200(11);

9 (18) "opiate" means a substance having an addiction forming  
10 or addiction sustaining capability similar to morphine or being capable  
11 of conversion into a drug having addiction forming or addiction  
12 sustaining capability; it does not include, unless specifically desig-  
13 nated as controlled under AS 17.30.010, the dextrorotatory isomer of  
14 3-methoxy-n-methylmorphinan and its salts (dextromethorphan); it does  
15 include its racemic and levorotatory forms;

16 (19) "opium poppy" means the plant of the species *Papaver*  
17 *somniferum* L., except its seeds;

18 (20) "poppy straw" means all parts, except the seeds, of  
19 the opium poppy, after mowing;

20 (21) "practitioner" means:

21 (A) a physician, dentist, veterinarian, scientific in-  
22 vestigator, or other person licensed, registered, or otherwise  
23 permitted to distribute, dispense, conduct research with respect  
24 to, or to administer a controlled substance in the course of pro-  
25 fessional practice or research in the state;

26 (B) a pharmacy, hospital or other institution licensed,  
27 registered, or otherwise permitted to distribute, dispense, con-  
28 duct research with respect to or to administer a controlled sub-  
29 stance in the course of professional practice or research in the

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state;

(22) "production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance;

(23) "ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of the household.

Sec. 17.30.600. SHORT TITLE. This chapter may be cited as the Alaska Controlled Substances Act.

\* Sec. 9. AS 08.64.380(3)(B) is amended to read:

(B) habitual overuse of alcoholic beverages or controlled substances [DEPRESSANT, HALLUCINOGENIC OR STIMULANT DRUGS,] as defined in AS 17.30 [AS 17.12.150(3), OR ADDICTION TO THE USE OF NARCOTIC DRUGS AS DEFINED IN AS 17.10.230(13)];

\* Sec. 10. AS 08.80.260(2) is amended to read:

(2) selling, bartering, or making available a controlled substance as defined in AS 17.30 [, MORPHINE, COCAINE OR OTHER, NARCOTIC] to a person addicted to the use of a controlled substance [DRUGS] except upon prescription issued by a licensed physician;

\* Sec. 11. AS 08.80.260(9) is amended to read:

(9) violation of regulations pertaining to the provisions of adequate security for controlled substances [DANGEROUS DRUGS];

\* Sec. 12. AS 08.80.470 is amended to read:

Sec. 08.80.470. CONSTRUCTION. Nothing in this chapter amends, modifies, repeals or otherwise changes any provision of the Controlled Substances Act (AS 17.30) [NARCOTIC DRUG ACT (AS 17.10)] or the Alaska Food, Drug and Cosmetic Act (AS 17.30).

\* Sec. 13. AS 28.35.030(a) is amended to read:

(a) A person who, while under the influence of intoxicating

1 liquor, or other controlled substance listed [DEPRESSANT, HALLUCINO-  
2 GENIC OR STIMULANT DRUGS OR NARCOTIC DRUGS AS DEFINED] in AS 17.30.040  
3 -- 17.30.090 [AS 17.10.230(13) AND AS 17.12.150(3)] operates or drives  
4 an automobile, motorcycle or other motor vehicle in the state, upon  
5 conviction, is punishable by a fine of not more than \$1,000, or by  
6 imprisonment for not more than one year, or by both and the court  
7 shall impose a minimum sentence of imprisonment of not less than three  
8 consecutive days. Upon a subsequent conviction within five years  
9 after a conviction under this section, the court shall impose a minimum  
10 sentence of imprisonment of not less than 10 consecutive days. The  
11 execution of sentence may not be suspended nor may probation or parole  
12 be granted until the minimum imprisonment provided in this section has  
13 been served, nor may imposition of sentence be suspended, except upon  
14 the condition that the defendant be imprisoned for no less than the  
15 minimum period provided in this section [, NOR MAY THE PUNISHMENT  
16 PROVIDED FOR IN THIS SECTION BE REDUCED UNDER AS 11.05.150]. In  
17 addition, his operator's license shall be revoked in accordance with  
18 AS 28.15.210(c). In addition, a person convicted under this statute  
19 shall undertake, for a term specified by the court, that program of  
20 alcohol education or rehabilitation which the court, after consideration  
21 of any information compiled under (b) of this section, finds appro-  
22 priate.

23 \* Sec. 14. AS 44.29.020 is amended to read:

24 Sec. 44.29.020. DUTIES OF DEPARTMENT. The Department of Health  
25 and Social Services shall administer the state programs of public  
26 health and welfare, including: (1) maternal and child health services;  
27 (2) preventive medical services; (3) public health nursing services;  
28 (4) sanitation and engineering services; (5) nutrition services; (6)  
29 health education; (7) laboratories; (8) mental health treatment and

1 diagnosis; (9) management of state institutions; (10) medical facil-  
2 ities; (11) old age assistance; (12) aid to dependent children; (13)  
3 aid to the blind; (14) child welfare services; (15) general relief;  
4 (16) licensing and supervision of child care facilities; [AND] (17)  
5 probation and parole supervision; and (18) the Alaska Controlled  
6 Substances Act (AS 17.30).

7 \* Sec. 15. (a) Prosecution for a violation of law occurring before the  
8 effective date of this Act is not affected or abated by this Act. Violation  
9 of any law repealed by this Act may still be prosecuted and brought to a  
10 final determination in accordance with the laws and regulations in effect  
11 at the time of the violation.

12 (b) Civil seizures or forfeitures and injunctive proceedings commenced  
13 before the effective date of this Act are not affected by this Act.

14 (c) All administrative proceedings pending under prior laws which are  
15 superseded by this Act shall be continued and brought to a final determina-  
16 tion in accordance with the laws and rules in effect before the effective  
17 date of this Act.

18 (d) The commissioner of health and social services shall initially  
19 permit persons to register who own or operate an establishment engaged in  
20 the manufacture, distribution, or dispensing of a controlled substance  
21 before the effective date of this Act and who are registered or licensed by  
22 the state.

23 (e) This Act applies to violations of law, seizures and forfeitures,  
24 injunctive proceedings, administrative proceedings and investigations which  
25 occur following its effective date.

26 \* Sec. 16. Orders issued and regulations adopted under a law affected  
27 by this Act and in effect on the effective date of this Act and not in con-  
28 flict with this Act continue until modified, superseded, or repealed.

29 \* Sec. 17. AS 04.15.080, 04.15.110, 17.10, 17.12, and 17.15 are repealed.

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\* Sec. 18. This Act takes effect on July 1, 1980.