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Referred: Health, Education &  
Social Services and Judiciary

1 IN THE HOUSE

BY ABOOD

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 679

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to imitation controlled substances."

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

8 \* Section 1. AS 17 is amended by adding a new chapter to read:

9 CHAPTER 14. IMITATION CONTROLLED SUBSTANCES ACT.

10 Sec. 17.14.010. MANUFACTURE OR DISTRIBUTION OF IMITATION CONTROLLED  
11 SUBSTANCE. Except as provided in AS 17.14.040, it is unlawful for a  
12 person to manufacture, distribute, or possess with intent to distribute,  
13 an imitation controlled substance. Except as provided in AS 17.14.020,  
14 a person who violates this section is guilty of a class C felony.

15 Sec. 17.14.015. POSSESSION OF SUBSTANCE WITH INTENT TO MANUFACTURE.

16 (a) Except as provided in AS 17.14.040, it is unlawful for a person to  
17 possess the following substances with the intent to manufacture an  
18 imitation controlled substance:

- 19 (1) ephedrine;  
20 (2) ephedrine sulfate;  
21 (3) pseudoephedrine;  
22 (4) pseudoephedrine hydrochloride;  
23 (5) phenylpropanolamine;  
24 (6) caffeine; or  
25 (7) theophylline.

26 (b) A person who violates this section is guilty of a class C  
27 felony.

28 Sec. 17.14.020. DISTRIBUTION OF IMITATION CONTROLLED SUBSTANCE TO  
29 A MINOR. A person 18 years of age or over who violates AS 17.14.010 by

1 distributing an imitation controlled substance to a person under 18  
2 years of age is guilty of a class B felony.

3 Sec. 17.14.030. ADVERTISEMENT TO PROMOTE THE DISTRIBUTION OF AN  
4 IMITATION CONTROLLED SUBSTANCE. It is unlawful for a person to knowingly  
5 place in a newspaper, magazine, handbill, or other publication, or to  
6 post or distribute in a public place, an advertisement or solicitation  
7 knowing that the purpose of the advertisement or solicitation is to  
8 promote the distribution of an imitation controlled substance in the  
9 state. A person who violates this section is guilty of a class C felony.

10 Sec. 17.14.040. IMITATION CONTROLLED SUBSTANCE AS PLACEBO. No  
11 civil or criminal liability may be imposed under this chapter on a  
12 person who manufactures, distributes, or possesses an imitation con-  
13 trolled substance solely for use as a placebo prescribed by a registered  
14 practitioner in the course of professional practice or research.

15 Sec. 17.14.050. FOREITURES. (a) The following may be forfeited  
16 to the state:

17 (1) an imitation controlled substance that has been manu-  
18 factured, distributed, or possessed in violation of this chapter;

19 (2) raw materials, products, and equipment that are used or  
20 intended for use in manufacturing, distributing, compounding, process-  
21 ing, or delivering an imitation controlled substance in violation of  
22 this chapter;

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

25 (4) a conveyance, including but not limited to aircraft,  
26 vehicles or vessels, that has been used or is intended for use in trans-  
27 porting or in any manner in facilitating the transportation, sale,  
28 receipt, possession, or concealment of property described in (1) or (2)  
29 of this subsection in violation of this chapter; however,

1 (A) a conveyance may not be forfeited under this section  
2 if the owner of the conveyance establishes, by a preponderance of  
3 the evidence, at a hearing before the court as the trier of fact,  
4 that use of the conveyance in furtherance of a violation of this  
5 chapter was by another person and that the owner was not a con-  
6 senting party nor privy to the violation;

7 (B) a forfeiture of a conveyance encumbered by a valid  
8 security interest at the time of seizure is subject to the interest  
9 of the secured party if the secured party establishes, by a prepon-  
10 derance of the evidence, at a hearing before the court as the trier  
11 of fact, that use of the conveyance in furtherance of a violation  
12 of this chapter was by another person and that the secured party  
13 was not a consenting party nor privy to the violation;

14 (5) books, records, and research products and materials,  
15 including formulas, microfilm, tapes, and data that are used in further-  
16 ance of a violation of this chapter;

17 (6) money, securities, negotiable instruments, or other  
18 things of value used in financial transactions derived from activity  
19 prohibited by this chapter; and

20 (7) a firearm that is visible, carried during, or used in  
21 furtherance of a violation of this chapter.

22 (b) Property listed in (a) of this section may be forfeited to the  
23 state either upon conviction of the defendant of a violation of this  
24 chapter or upon judgment of a court in a separate civil proceeding in  
25 rem. The court may order a forfeiture in the in rem proceeding if it  
26 finds that an item specified in (a) of this section was used during or  
27 in aid of a violation of this chapter.

28 (c) It is not a defense in an in rem proceeding brought under this  
29 section that a criminal proceeding has resulted in a conviction for a

1 violation of this chapter.

2 (d) Property listed in (a) of this section may be seized by a  
3 peace officer upon an order issued by a court having jurisdiction over  
4 the property upon a showing of probable cause that the property may be  
5 forfeited under (a) of this section. Seizure without a court order may  
6 be made if

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

9 (2) the property subject to seizure has been the subject of  
10 an earlier judgment in favor of the state in a criminal proceeding or  
11 civil proceeding in rem under this chapter; or

12 (3) there is probable cause that the property was used, is  
13 being used, or is intended for use, in violation of this chapter and the  
14 property is easily movable; property seized under this paragraph may not  
15 be held for more than 48 hours without a court order obtained to continue  
16 its detention.

17 (e) Property taken or detained under (d) of this section shall be  
18 held in the custody of either the commissioner of public safety or a  
19 municipal law enforcement agency authorized by the commissioner of  
20 public safety to retain custody of property listed in (a) of this section  
21 subject only to the orders and decrees of the court having jurisdiction  
22 over any forfeiture proceedings. If property is seized under this  
23 chapter, the commissioner of public safety or an authorized municipal  
24 law enforcement agency may

25 (1) place the property under seal;

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

27 or

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

1 (f) Within 10 days after a seizure under this section, the commis-  
2 sioner of public safety shall make an inventory of any property seized,  
3 including imitation controlled substances, and shall appraise the value  
4 of any items seized other than imitation controlled substances.

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

20 (h) Upon service or publication of notice of commencement of a  
21 forfeiture action under this section, a person claiming interest in the  
22 property shall file within 30 days after the service or publication, a  
23 notice of claim setting out the nature of his interest, the date it was  
24 acquired, the consideration paid, and an answer to the state's allega-  
25 tions. If a claim and answer is not filed within the time specified,  
26 the property described in the state's allegation must be ordered for-  
27 feited to the state without further proceedings or showings.

28 (i) Questions of fact or law raised by a notice of forfeiture  
29 action and answer of a claimant in an action commenced under this section

1 must be determined by the court sitting without a jury. This proceeding  
2 may be held in abeyance until conclusion of any pending criminal charges  
3 against the claimant under this chapter.

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

6 (1) to a court in which a warrant for seizure has been issued;

7 (2) to a court in which a criminal or civil action alleging  
8 forfeiture of the item has been filed; or

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

12 (k) An item may not be released by the court under (j) of this  
13 section unless the claimant gives adequate assurance that the item will  
14 remain subject to the court's jurisdiction and

15 (1) the court finds that the release is in the best interests  
16 of the state; or

17 (2) the claimant provides a bond or other valid and equiva-  
18 lent security equal to twice the assessed value of the item.

19 (1) A claimant may petition the court for sale of an item before  
20 final disposition of court proceedings. The court shall grant a peti-  
21 tion for sale upon a finding that the sale is in the best interests of  
22 the state and the preservation and maintenance of the item seized.  
23 Proceeds from the sale plus interest to the date of final disposition of  
24 the court proceedings become the subject of the forfeiture action.

25 (m) Property forfeited under this section other than imitation  
26 controlled substances shall be disposed of by the commissioner of admin-  
27 istration in accordance with applicable law. The commissioner of admin-  
28 istration may

29 (1) destroy property harmful to the public;

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

4 (3) take custody of the property and authorize its use in the  
5 enforcement of this chapter, transfer it to the Board of Pharmacy to use  
6 for medical or scientific purposes, or transfer it to another agency of  
7 the state or a political subdivision of the state for a use in further-  
8 ance of the administration of justice;

9 (4) take custody of the property and remove it for disposi-  
10 tion in accordance with law; or

11 (5) forward it to the Drug Enforcement Administration of the  
12 United States Department of Justice for disposition.

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

15 (1) if the claimant is entitled to the item, it shall be  
16 delivered to him immediately;

17 (2) if the claimant is entitled to remittance of some value  
18 less than the total value of the item, the claimant is entitled, at his  
19 choice, to receive either the value of the claimant's interest or, upon  
20 receipt of payment of the difference in value by the claimant, the  
21 entire item.

22 (o) An offender who used an item subject to remission in violation  
23 of this chapter shall be assessed a fine which may not be less than the  
24 cost of any lien payment or remittance made by the state plus the rea-  
25 sonable costs of the seizure.

26 (p) An imitation controlled substance manufactured, possessed,  
27 transferred, sold, or offered for sale in violation of this chapter is  
28 contraband and must be seized and summarily forfeited to the state. The  
29 commissioner of public safety or his designee, including a municipal law

1 enforcement agency authorized under (e) of this section to retain custody  
2 of imitation controlled substances, is responsible for the disposal of  
3 imitation controlled substances that have been forfeited. The imitation  
4 controlled substances shall be disposed of in accordance with procedures  
5 and requirements prescribed by the commissioner.

6 (q) The commissioner of public safety shall provide a procedure  
7 allowing the Board of Pharmacy to use property forfeited under this  
8 section for medical or scientific purposes.

9 Sec. 17.14.099. DEFINITIONS. In this chapter

10 (1) "controlled substance" means a substance as defined in  
11 AS 11.81.900(6);

12 (2) "distribute" means the actual, constructive, or attempted  
13 transfer, delivery, or dispensing to another of an imitation controlled  
14 substance;

15 (3) "imitation controlled substance" means a substance con-  
16 taining ephedrine, ephedrine sulfate, pseudoephedrine, pseudoephedrine  
17 hydrochloride, phenylpropanolamine, caffeine, or theophylline, that is  
18 not a controlled substance, and that by dosage unit appearance (includ-  
19 ing color, shape, size, and markings) or by representations would lead a  
20 reasonable person to believe that the substance is a controlled sub-  
21 stance; the term "representations", as used in this paragraph, includes  
22 but is not limited to the following:

23 (A) statements made by an owner or by anyone else in  
24 control of the substance concerning the nature of the substance, or  
25 its use or effect;

26 (B) statements made to the recipient that the substance  
27 may be resold for inordinate profit;

28 (C) whether the substance is packaged in a manner norm-  
29 ally used for illicit controlled substances;

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(D) evasive tactics or actions used by the owner or person in control of the substance to avoid detection by law enforcement authorities;

(E) prior convictions, if any, of an owner, or anyone in control of the object, under state or federal law related to controlled substances or fraud;

(F) the proximity of the substances to controlled substances;

(4) "manufacture" means the production, preparation, compounding, processing, encapsulating, packaging or repackaging, labeling or relabeling, of an imitation controlled substance.