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1 IN THE SENATE

BY BRADLEY

2 SENATE BILL NO. 91

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to drug paraphernalia."

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 11. DRUG PARAPHERNALIA.

10 Sec. 17.11.010. USE AND POSSESSION OF DRUG PARAPHERNALIA. It is  
11 unlawful for a person to use, or to possess with intent to use, drug  
12 paraphernalia to plant, propagate, cultivate, grow, harvest, manufac-  
13 ture, compound, convert, produce, process, prepare, test, analyze,  
14 pack, repack, store, contain, conceal, inject, ingest, inhale, or  
15 otherwise introduce into the human body a controlled substance in  
16 violation of AS 17.10 or AS 17.12.

17 Sec. 17.11.020. MANUFACTURE AND DELIVERY OF DRUG PARAPHERNALIA.  
18 It is unlawful for a person to deliver, possess with intent to deliver,  
19 or manufacture with intent to deliver, drug paraphernalia, knowing that  
20 it will be used to plant, propagate, cultivate, grow, harvest, manufac-  
21 ture, compound, convert, produce, process, prepare, test, analyze,  
22 pack, repack, store, contain, conceal, inject, ingest, inhale, or  
23 otherwise introduce into the human body a controlled substance in  
24 violation of AS 17.10 or AS 17.12.

25 Sec. 17.11.030. EVIDENCE CONSIDERED. In determining whether an  
26 object is drug paraphernalia, a court or other authority shall consider,  
27 in addition to all other logically relevant factors, the following:

28 (1) statements by an owner or by a person in control of the  
29 object concerning its use;

1 (2) prior convictions, if any, of an owner, or of a person  
2 in control of the object, under state or federal law relating to a con-  
3 trolled substance;

4 (3) the proximity of the object, in time and space, to a  
5 direct violation of AS 17.10 or AS 17.12;

6 (4) the proximity of the object to a controlled substance;

7 (5) the existence of residue of a controlled substance on  
8 the object;

9 (6) direct or circumstantial evidence of the intent of an  
10 owner, or of a person in control of the object, to deliver it to a  
11 person whom he knows, or should reasonably know, intends to use the  
12 object to facilitate a violation of AS 17.10 or AS 17.12; the innocence  
13 of an owner, or of a person in control of the object, as to a direct  
14 violation of AS 17.10 or AS 17.12 does not prevent a finding that the  
15 object is intended for use, or designed for use as drug paraphernalia;

16 (7) instructions, oral or written, provided with the object  
17 concerning its use;

18 (8) descriptive materials accompanying the object which  
19 explain or depict its use;

20 (9) national and local advertising concerning its use;

21 (10) the manner in which the object is displayed for sale;

22 (11) direct or circumstantial evidence of the ratio of sales  
23 of the object to the total sales of the business enterprise;

24 (12) the existence and scope of legitimate uses for the  
25 object in the community;

26 (13) expert testimony concerning its use.

27 Sec. 17.11.040. PENALTIES. (a) Except as provided in (b) of  
28 this section, a person who violates this chapter is guilty of a misde-  
29 meanor.

1 (b) A person 18 years of age or over who violates AS 17.11.020 by  
2 delivering drug paraphernalia to a person under 18 years of age who is  
3 at least three years his junior is guilty of a felony.

4 Sec. 17.11.050. FORFEITURES. (a) Drug paraphernalia may be  
5 forfeited to the state either upon conviction of the defendant of a  
6 violation of AS 17.11.010 - 17.11.020 or upon judgment of a court in a  
7 separate civil proceeding in rem that an item of drug paraphernalia was  
8 used in a violation of AS 17.11.010 - 17.11.020.

9 (b) It is not a defense in an in rem proceeding brought under  
10 this section that a criminal proceeding is pending or has resulted in a  
11 conviction or acquittal of a person of a violation of AS 17.11.010 -  
12 17.11.020, or that a criminal proceeding has been dismissed, or that  
13 the item of drug paraphernalia has not been forfeited in any criminal  
14 proceeding, or that multiple actions are pending.

15 (c) Drug paraphernalia subject to forfeiture under this section  
16 may be seized by a peace officer upon an order issued by a court having  
17 jurisdiction over the property upon a showing of probable cause that  
18 the paraphernalia is subject to forfeiture under (a) of this section.  
19 Seizure without a court order may be made if

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

22 (2) the paraphernalia subject to seizure has been the subject  
23 of a prior judgment in favor of the state in a criminal proceeding or  
24 civil proceeding in rem based on a violation of AS 17.11.010 - 17.11.-  
25 020; or

26 (3) there is probable cause that the paraphernalia was or is  
27 being used in violation of AS 17.11.010 - 17.11.020 and the property is  
28 easily movable; paraphernalia seized under this paragraph may not be  
29 held for more than 48 hours or until an order continuing the seizure

1 may be applied for and issued by a court, whichever is earlier.

2 (d) Paraphernalia taken or detained under (a) of this section is  
3 in the custody of the Department of Public Safety subject only to an  
4 order or decree of the court having jurisdiction over the forfeiture  
5 proceedings. If property is seized under this chapter, the Department  
6 of Public Safety may

7 (1) place the paraphernalia under seal;

8 (2) remove the paraphernalia to a place designated by the  
9 court;

10 (3) take custody of the paraphernalia and remove it to an  
11 appropriate location for disposition according to law.

12 (e) Within 10 days of a seizure under this section, the state  
13 shall inventory the paraphernalia seized and its contents and appraise  
14 the value of the items seized.

15 (f) Within 30 days of a seizure under this section the Department  
16 of Public Safety shall make reasonable efforts to ascertain the identity  
17 and whereabouts of any person holding an interest or the assignee of a  
18 person holding an interest in the paraphernalia seized, including a  
19 right to possession, a lien, a mortgage, or conditional sales contract.  
20 The Department of Public Safety shall notify the person ascertained to  
21 have an interest in the paraphernalia seized of the impending forfei-  
22 ture, and, before forfeiture, the state shall publish notice of forfei-  
23 ture action of an item valued at \$500 or more in a newspaper of general  
24 circulation in the judicial district in which the seizure was made, or  
25 if no newspaper is published in that district, in a newspaper published  
26 in the state and distributed in that district. The notice shall be  
27 published once a week for four consecutive calendar weeks.

28 (g) Upon service or publication of notice of commencement of an  
29 action under (a) of this section, a person claiming interest in the

1 property shall file within 20 days from the service or publication, a  
2 notice of claim setting out the nature of his interest, the date it was  
3 acquired, the consideration paid, and an answer to the state's alleged  
4 grounds of forfeiture under (a) of this section. If no claim and  
5 answer is filed within the time specified, the paraphernalia described  
6 in the state's allegation must be ordered forfeited to the state with-  
7 out further proceedings or showings.

8 (h) The owner of paraphernalia subject to forfeiture under (a) of  
9 this section is entitled to relief from forfeiture in the nature of  
10 remission of the forfeiture if in an action under (a) of this section  
11 the owner shows by a preponderance of the evidence that he was not a  
12 party to the violation and had no actual knowledge that the property  
13 was used or was to be used in violation of the law.

14 (i) A person other than the owner holding, or the assignee of, a  
15 lien, mortgage, conditional sales contract on, or the right to posses-  
16 sion to paraphernalia subject to the forfeiture under (a) of this  
17 section, is entitled to relief from the forfeiture in the nature of  
18 remission of the forfeiture if in an action under (a) of this section  
19 the person shows by a preponderance of the evidence that he was not a  
20 party to the violation subjecting the paraphernalia to forfeiture and  
21 had no actual knowledge that the paraphernalia was used or was to be  
22 used in violation of the law.

23 (j) Questions of fact or law raised by a notice of claim and  
24 answer of a person claiming an interest in the paraphernalia in an  
25 action commenced under (a) of this section must be determined by the  
26 court sitting as a trier of fact at a hearing without a jury. Such a  
27 proceeding may, in the court's discretion, be held in abeyance until  
28 conclusion of any pending criminal charges against the claimant under  
29 AS 17.11.010 - 17.11.020.

1 (k) A person claiming an interest in paraphernalia may at any time  
2 petition for release of a seized item as follows:

- 3 (1) to a court in which a seizure warrant has been issued;  
4 (2) to a court in which a criminal or civil action alleging  
5 forfeiture of the item has been filed; or  
6 (3) before an action is filed, or if no seizure warrant was  
7 issued, to a court in the district in which the violation took place.

8 (1) An item may not be released by the court under (k) of this  
9 section except upon an adequate assurance from the claimant that the  
10 item will remain subject to the court's jurisdiction and within the  
11 constructive custody of the state and

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

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

16 (m) A claimant may petition the court for sale of an item before  
17 final disposition. The court shall grant a petition for sale upon a  
18 finding that the sale is in the best interests of the state and the  
19 preservation and maintenance of the item seized. Proceeds from the  
20 sale plus interest to the date of final disposition shall thereafter be  
21 treated as the subject of the forfeiture action.

22 (n) Paraphernalia forfeited under this section must be disposed  
23 of according to court order. The court may order the Department of  
24 Public Safety to

- 25 (1) destroy paraphernalia harmful to the public;  
26 (2) sell the paraphernalia and use the proceeds for payment  
27 of all proper expenses of the proceedings for forfeiture and sale,  
28 including expenses of seizure, custody, and court costs;  
29 (3) take custody of the paraphernalia and use it in the

1 enforcement of this chapter, AS 17.10, or AS 17.12, or transfer it to  
2 another agency of the state for a use designated by the court in  
3 furtherance of the administration of justice;

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

6 (5) forward it to the United States Drug Enforcement Admini-  
7 stration for disposition.

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

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

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

19 Sec. 17.11.060. DEFINITIONS. In this chapter

20 (1) "controlled substance" means a narcotic drug as defined  
21 in AS 17.10.230(13) or in a regulation adopted under AS 17.10, or a  
22 depressant, hallucinogenic, or stimulant drug as defined in AS 17.12.-  
23 150(3) or a regulation adopted under AS 17.12;

24 (2) "drug paraphernalia" and "paraphernalia" means equipment,  
25 products, and materials of any kind which are used or intended for use  
26 in planting, propagating, cultivating, growing, harvesting, manufactur-  
27 ing, compounding, converting, producing, processing, preparing, testing,  
28 analyzing, packaging, repackaging, storing, containing, concealing,  
29 injecting, ingesting, inhaling, or otherwise introducing into the human

1 body a controlled substance in violation of AS 17.10 or AS 17.12; "drug  
2 paraphernalia" or "paraphernalia" includes, but is not limited to,

3 (A) kits used or intended for use in planting, propa-  
4 gating, cultivating, growing or harvesting of any species of plant  
5 which is a controlled substance or from which a controlled sub-  
6 stance can be derived;

7 (B) kits used or intended for use in manufacturing,  
8 compounding, converting, producing, processing, or preparing  
9 controlled substances;

10 (C) isomerization devices used or intended for use in  
11 increasing the potency of a species of plant which is a controlled  
12 substance;

13 (D) testing equipment used or intended for use in  
14 identifying, or in analyzing the strength, effectiveness, or  
15 purity of controlled substances;

16 (E) scales and balances used or intended for use in  
17 weighing or measuring controlled substances;

18 (F) diluents and adulterants, such as quinine hydro-  
19 chloride, mannitol, mannite, dextrose and lactose, used or intended  
20 for use in cutting controlled substances;

21 (G) separation gins and sifters used or intended for  
22 use in removing twigs and seeds from, or in otherwise cleaning or  
23 refining, marijuana;

24 (H) blenders, bowls, containers, spoons, and mixing  
25 devices used or intended for use in compounding controlled sub-  
26 stances;

27 (I) capsules, balloons, envelopes, and other containers  
28 used or intended for use in packaging small quantities of con-  
29 trolled substances;

1 (J) containers and other objects used or intended for  
2 use in storing or concealing controlled substances;

3 (K) hypodermic syringes, needles, and other objects  
4 used or intended for use in parenterally injecting controlled  
5 substances into the human body;

6 (L) objects used or intended for use in ingesting,  
7 inhaling, or otherwise introducing marijuana, cocaine, hashish, or  
8 hashish oil into the human body, such as

9 (i) metal, wooden, acrylic, glass, stone, plastic,  
10 or ceramic pipes with or without screens, permanent screens,  
11 hashish heads, or punctured metal bowls;

12 (ii) water pipes;

13 (iii) carburetion tubes and devices;

14 (iv) smoking and carburetion masks;

15 (v) roach clips, meaning objects used to hold  
16 burning material, such as a marijuana cigarette, that has  
17 become too small or too short to be held in the hand;

18 (vi) miniature cocaine spoons and cocaine vials;

19 (vii) chamber pipes;

20 (viii) carburetor pipes;

21 (ix) electric pipes;

22 (x) air-driven pipes;

23 (xi) chillums;

24 (xii) bongs;

25 (xiii) ice pipes or chillers.  
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