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1 IN THE HOUSE

BY ABOOD, WENDTE AND LINDAUER

2

HOUSE BILL NO. 10

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST 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.

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Sec. 17.14.010. MANUFACTURE OR DISTRIBUTION OF IMITATION CON-

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TROLLED SUBSTANCE. Except as provided in AS 17.14.040, it is unlawful

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for a person to manufacture, distribute, or possess with intent to

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distribute, an imitation controlled substance. Except as provided in

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AS 17.14.020, a person who violates this section is guilty of a

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class C felony.

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Sec. 17.14.015. POSSESSION OF SUBSTANCE WITH INTENT TO MANUFAC-

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TURE. (a) Except as provided in AS 17.14.040, it is unlawful for a

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person to possess the following substances with the intent to manufac-

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ture an imitation controlled substance:

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(1) ephedrine;

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(2) ephedrine sulfate;

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(3) pseudoephedrine;

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(4) pseudoephedrine hydrochloride;

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(5) phenylpropanolamine;

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(6) caffeine; or

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(7) theophylline.

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(b) A person who violates this section is guilty of a class C

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felony.

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Sec. 17.14.020. DISTRIBUTION OF IMITATION CONTROLLED SUBSTANCE

1 TO A MINOR. A person 18 years of age or over who violates AS 17.14.-  
2 010 by distributing an imitation controlled substance to a person  
3 under 18 years of age is guilty of a class B felony.

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

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

17 Sec. 17.14.050. FORFEITURES. (a) The following may be for-  
18 feited to the state:

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

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

25 (3) property that is used or intended for use as a con-  
26 tainer for property described in (1) or (2) of this subsection;

27 (4) a conveyance, including but not limited to aircraft,  
28 vehicles or vessels, that has been used or is intended for use in  
29 transporting or in any manner in facilitating the transportation,

1 sale, receipt, possession, or concealment of property described in (1)  
2 or (2) of this subsection in violation of this chapter; however,

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

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

17 (5) books, records, and research products and materials,  
18 including formulas, microfilm, tapes, and data that are used in fur-  
19 therance of a violation of this chapter;

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

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

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 upon judgment of a court in a separate civil proceed-  
28 ing in rem. The court may order a forfeiture in the in rem proceeding  
29 if it finds that an item specified in (a) of this section was used

1 during or in aid of a violation of this chapter.

2 (c) It is not a defense in an in rem proceeding brought under  
3 this section that a criminal proceeding has resulted in a conviction  
4 for a violation of this chapter.

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

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

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

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

20 (e) Property taken or detained under (d) of this section shall  
21 be held in the custody of either the commissioner of public safety or  
22 a municipal law enforcement agency authorized by the commissioner of  
23 public safety to retain custody of property listed in (a) of this  
24 section subject only to the orders and decrees of the court having  
25 jurisdiction over any forfeiture proceedings. If property is seized  
26 under this chapter, the commissioner of public safety or an authorized  
27 municipal law enforcement agency 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 after a seizure under this section, the  
5 commissioner of public safety shall make an inventory of any property  
6 seized, including imitation controlled substances, and shall appraise  
7 the value of any items seized other than imitation controlled sub-  
8 stances.

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

24 (h) Upon service or publication of notice of commencement of a  
25 forfeiture action under this section, a person claiming interest in  
26 the property shall file within 30 days after the service or publi-  
27 cation, a notice of claim setting out the nature of the claimant's  
28 interest, the date it was acquired, the consideration paid, and an  
29 answer to the state's allegations. If a claim and answer is not filed

1 within the time specified, the property described in the state's  
2 allegation must be ordered forfeited to the state without further  
3 proceedings or showings.

4 (i) Questions of fact or law raised by a notice of forfeiture  
5 action and answer of a claimant in an action commenced under this  
6 section must be determined by the court sitting without a jury. This  
7 proceeding may be held in abeyance until conclusion of any pending  
8 criminal charges against the claimant under this chapter.

9 (j) A claimant under (h) of this section may at any time peti-  
10 tion for release of a seized item as follows:

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

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

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

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

21 (1) the court finds that the release is in the best inter-  
22 ests of the state; or

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

25 (1) A claimant may petition the court for sale of an item before  
26 final disposition of court proceedings. The court shall grant a peti-  
27 tion for sale upon a finding that the sale is in the best interests of  
28 the state and the preservation and maintenance of the item seized.  
29 Proceeds from the sale plus interest to the date of final disposition

1 of the court proceedings become the subject of the forfeiture action.

2 (m) Property forfeited under this section other than imitation  
3 controlled substances shall be disposed of by the commissioner of  
4 administration in accordance with applicable law. The commissioner of  
5 administration may

6 (1) destroy property harmful to the public;

7 (2) sell the property and use the proceeds for payment of  
8 all proper expenses of the proceedings for forfeiture and sale, in-  
9 cluding expenses of seizure, custody, and court costs;

10 (3) take custody of the property and authorize its use in  
11 the enforcement of this chapter, transfer it to the Board of Pharmacy  
12 to use for medical or scientific purposes, or transfer it to another  
13 agency of the state or a political subdivision of the state for a use  
14 in furtherance of the administration of justice;

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

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

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

21 (1) if the claimant is entitled to the item, it shall be  
22 delivered to the claimant immediately;

23 (2) if the claimant is entitled to remittance of some value  
24 less than the total value of the item, the claimant may choose to  
25 receive either the value of the claimant's interest or, upon receipt  
26 of payment of the difference in value by the claimant, the entire  
27 item.

28 (o) An offender who used an item subject to remission in vio-  
29 lation of this chapter shall be assessed a fine which may not be less

1 than the cost of any lien payment or remittance made by the state plus  
2 the reasonable costs of the seizure.

3 (p) An imitation controlled substance manufactured, possessed,  
4 transferred, sold, or offered for sale in violation of this chapter is  
5 contraband and must be seized and summarily forfeited to the state.  
6 The commissioner of public safety or the commissioner's designee,  
7 including a municipal law enforcement agency authorized under (e) of  
8 this section to retain custody of imitation controlled substances, is  
9 responsible for the disposal of imitation controlled substances that  
10 have been forfeited. The imitation controlled substances shall be  
11 disposed of in accordance with procedures and requirements prescribed  
12 by the commissioner.

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

16 Sec. 17.14.099. DEFINITIONS. In this chapter

17 (1) "controlled substance" means a substance as defined in  
18 AS 11.81.900(6);

19 (2) "distribute" means the actual, constructive, or at-  
20 tempted transfer, delivery, or dispensing to another of an imitation  
21 controlled substance;

22 (3) "imitation controlled substance" means a substance con-  
23 taining ephedrine, ephedrine sulfate, pseudoephedrine, pseudoephedrine  
24 hydrochloride, phenylpropanolamine, caffeine, or theophylline, that is  
25 not a controlled substance, and that by dosage unit appearance (in-  
26 cluding color, shape, size, and markings) or by representations would  
27 lead a reasonable person to believe that the substance is a controlled  
28 substance; the term "representations", as used in this paragraph,  
29 includes but is not limited to the following:

1 (A) statements made by an owner or by anyone else in  
2 control of the substance concerning the nature of the substance,  
3 or its use or effect;

4 (B) statements made to the recipient that the sub-  
5 stance may be resold for inordinate profit;

6 (C) whether the substance is packaged in a manner  
7 normally used for illicit controlled substances;

8 (D) evasive tactics or actions used by the owner or  
9 person in control of the substance to avoid detection by law en-  
10 forcement authorities;

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

14 (F) the proximity of the substances to controlled sub-  
15 stances;

16 (4) "manufacture" means the production, preparation, com-  
17 pounding, processing, encapsulating, packaging or repackaging, label-  
18 ing or relabeling, of an imitation controlled substance.