

Introduced: 2/12/85  
Referred: Health, Education and Social Services,  
and Judiciary

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO. 151

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act amending the controlled substance, imitation  
7 controlled substance, and forfeiture laws."

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

9 \* Section 1. AS 09.50 is amended by adding a new article to read:

10 ARTICLE 7. FORFEITURE.

11 Sec. 09.50.400. PROCEDURES APPLICABLE IN FORFEITURE PROCEEDINGS.

12 The State of Alaska is authorized to initiate a proceeding to forfeit  
13 property if the property is made subject to forfeiture by state law.  
14 Unless otherwise specifically provided in a state law authorizing  
15 forfeiture, the procedures applicable to the forfeiture of property  
16 are specified in AS 09.50.400 -- 09.50.480.

17 Sec. 09.50.410. SEIZURE AND CUSTODY OF PROPERTY. (a) Property  
18 may be seized by a peace officer under an order issued by a court upon  
19 a showing of probable cause that the property is subject to forfei-  
20 ture. The property may be seized without a court order if

21 (1) constitutionally permissible or otherwise authorized by  
22 law;

23 (2) the property has been the subject of a judgment in  
24 favor of the state in a forfeiture proceeding; or

25 (3) there is probable cause to believe that the property is  
26 subject to forfeiture and is easily movable; property seized under  
27 this paragraph may not be held for more than 48 hours without a court  
28 order, which may be obtained in an ex parte proceeding, based on  
29 probable cause that the property is subject to forfeiture.

1 (b) Property seized under (a) of this section must be held in  
2 the custody of the commissioner of public safety or a municipal law  
3 enforcement agency authorized by the commissioner to retain custody,  
4 subject only to the orders and decrees of the court. If property is  
5 seized under this section, the commissioner of public safety or an  
6 authorized municipal law enforcement agency may

7 (1) place the property under seal;

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

9 or

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

12 (c) Within 10 days after a seizure under this section, the  
13 commissioner of public safety or authorized municipal law enforcement  
14 agency shall make an inventory of any property seized, including  
15 controlled substances, and shall estimate the value of any items  
16 seized other than controlled substances. As used in this section,  
17 "controlled substance" includes "imitation controlled substance" as  
18 defined in AS 11.73.099.

19 Sec. 09.50.420. NOTICE OF SEIZURE AND FORFEITURE ACTION; AN-  
20 SWERS. (a) Within 30 days after a seizure under AS 09.50.410, the  
21 commissioner of public safety shall, in any manner authorized for  
22 service of process under rules of civil procedure, give notice of the  
23 seizure to any person known to have an interest in the property if it  
24 has an estimated value of \$500 or more, or whose interest in the  
25 property is ascertainable from official registration numbers, li-  
26 censes, or other state, federal, or municipal numbers on the property.  
27 The notice required by this subsection need not be given if the state  
28 has filed a motion to forfeit or a complaint under AS 09.50.430(a)  
29 within 30 days after seizure of the property.

1 (b) Within 30 days after the filing of a civil in rem action or  
2 a motion to forfeit in a civil or criminal action, the commissioner of  
3 public safety shall,

4 (1) in any manner authorized for service of process under  
5 rules of civil procedure, provide a copy of the complaint or motion to  
6 any person known to have an interest in the property, other than the  
7 defendant, when a motion for forfeiture has been filed in a criminal  
8 proceeding; and

9 (2) begin to publish notice of the action to forfeit prop-  
10 erty with an estimated value of \$500 or more in a newspaper of general  
11 circulation in the judicial district where the property was seized, or  
12 if the property has not been seized, the judicial district where the  
13 forfeiture action was filed; if no newspaper is published in that  
14 judicial district, the notice must be published in a newspaper pub-  
15 lished in the state and distributed in that judicial district; the  
16 notice must be published once each week during four consecutive calen-  
17 dar weeks.

18 (c) Upon service of process or publication under (b) of this  
19 section, a person claiming an interest in the property, or a defendant  
20 in a criminal proceeding who has been served with a motion to forfeit,  
21 shall file an answer within the time permitted for answering civil  
22 complaints under applicable rules of civil procedure. The answer must  
23 set out the reasons why the property is not subject to forfeiture or  
24 why the claimant is entitled to remission under AS 09.50.470. The  
25 answer must include the nature of the claimant's interest in the  
26 property, the date it was acquired, the consideration paid, and the  
27 circumstances under which it was acquired. If an answer is not filed  
28 within the required time period, the property must be forfeited to the  
29 state without further proceedings or showings.

1 (d) The notice requirements of this section do not apply to  
2 controlled substances under AS 11.71 or imitation controlled sub-  
3 stances under AS 11.73.

4 Sec. 09.50.430. PROCEEDINGS RESULTING IN FORFEITURE; BURDEN OF  
5 PROOF. (a) A forfeiture proceeding is initiated by the state by the  
6 filing of a motion to forfeit in a criminal case or in a civil pro-  
7 ceeding relating to the conduct making the property subject to forfei-  
8 ture, or by the filing of a complaint in a separate in rem proceeding.

9 (b) Questions of fact or law in a forfeiture proceeding under  
10 this section must be determined by the court sitting without a jury.  
11 In a forfeiture proceeding the state must prove by a preponderance of  
12 the evidence that the property is subject to forfeiture under the law  
13 authorizing forfeiture. A forfeiture proceeding, including discovery,  
14 may be held in abeyance until the conclusion of a pending criminal  
15 action relating to the conduct making the property subject to forfei-  
16 ture.

17 Sec. 09.50.440. DEFENSES EXEMPTED. It is not a defense to a  
18 proceeding to forfeit property under AS 09.50.430 that a criminal  
19 proceeding has resulted in a conviction of a lesser included offense  
20 or an acquittal.

21 Sec. 09.50.450. PETITION FOR RELEASE OF SEIZED PROPERTY. (a) A  
22 claimant may at any time petition the court for release of property  
23 seized under AS 09.50.410 if the claimant

24 (1) has filed a timely answer under AS 09.50.420(c); or

25 (2) before the initiation of a forfeiture action, files a  
26 notice of claim setting out the nature of the claimant's interest in  
27 the property, the date it was acquired, the consideration paid, and  
28 the circumstances under which it was acquired.

29 (b) The court may release property that is not likely to be used

1 as evidence by the state or a defendant in a criminal proceeding, or  
2 by any party in a civil proceeding, if

3 (1) the claimant gives adequate assurance that the property  
4 will remain subject to the court's jurisdiction;

5 (2) the court finds that the release is in the best inter-  
6 ests of the state; and

7 (3) the claimant provides a bond or other valid and equiva-  
8 lent security equal to twice the estimated value of the property.

9 Sec. 09.50.460. PETITION FOR DISPOSITION OF SEIZED PROPERTY.

10 (a) The state may petition the court for disposition of seized prop-  
11 erty before the termination of court proceedings. A claimant may also  
12 seek a petition for disposition before the termination of court pro-  
13 ceedings if the claimant

14 (1) has filed a timely answer under AS 09.50.420(c); or

15 (2) before the initiation of a forfeiture action, files a  
16 notice of claim setting out the nature of the claimant's interest in  
17 the property, the date it was acquired, the consideration paid, and  
18 the circumstances under which it was acquired.

19 (b) The court may grant a petition for disposition if the prop-  
20 erty is not likely to be used as evidence by the state or a defendant  
21 in a criminal proceeding, or by any party in a civil proceeding, and  
22 the court finds that the disposition is in the best interests of the  
23 state and the preservation and maintenance of the value of the proper-  
24 ty seized. Proceeds from the disposition plus interest to the date of  
25 termination of the court proceedings become the subject of the forfei-  
26 ture action.

27 Sec. 09.50.470. FORFEITURE AND REMISSION. (a) Once the state  
28 has established that property is subject to forfeiture under the law  
29 authorizing forfeiture, the property must be forfeited to the state,

1 except that a claimant who has filed an answer under AS 09.50.420(c)  
2 may prove by a preponderance of the evidence that the claimant is  
3 entitled to remission because the claimant

4 (1) has a valid interest in the property, acquired in good  
5 faith;

6 (2) did not participate in the conduct that resulted in the  
7 property being subject to forfeiture; and

8 (3) did not know or have reasonable cause to believe that  
9 the property had been or would be used or derived in a manner making  
10 the property subject to forfeiture.

11 (b) Upon a showing that a claimant is entitled to remission  
12 under (a) of this section, the court shall order that

13 (1) if the claimant is entitled to the property, it must be  
14 delivered to the claimant immediately;

15 (2) if the claimant is entitled to some value less than the  
16 total value of the property, the claimant may choose to receive either  
17 the value of the interest or, upon payment of the difference in value,  
18 the entire property.

19 (c) The court may, as part of a sentence, or as a condition of a  
20 probation or suspended imposition of sentence, order the payment of  
21 reasonable maintenance, storage, disposal, publication, attorney fees,  
22 or other costs associated with the forfeiture or remission of proper-  
23 ty.

24 Sec. 09.50.480. STATE DISPOSAL OF FORFEITED PROPERTY. Property  
25 forfeited under this chapter, other than controlled substances, must  
26 be disposed of by the commissioner of administration in accordance  
27 with applicable law. Controlled substances and imitation controlled  
28 substances must be disposed of under AS 17.30.126. The commissioner  
29 of administration may, consistent with other applicable law,

1 (1) destroy property harmful to the public;

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

5 (3) take custody of the property and authorize its use in  
6 the enforcement of the law or transfer it to another agency of the  
7 state or a political subdivision of the state for a use in furtherance  
8 of the administration of justice;

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

11 (5) forward it to the United States Department of Justice  
12 for disposition; or

13 (6) transfer ownership of an aircraft to the Alaska Wing,  
14 Civil Air Patrol.

15 \* Sec. 2. AS 11.71.040(a) is amended to read:

16 (a) Except as authorized in AS 17.30 or AS 17.35, a person  
17 commits the crime of misconduct involving a controlled substance in  
18 the fourth degree if the person

19 (1) manufactures or delivers any amount of a schedule IVA  
20 or VA controlled substance or possesses any amount of a schedule IVA  
21 or VA controlled substance with intent to manufacture or deliver;

22 (2) manufactures or delivers, or possesses with the intent  
23 to manufacture or deliver, one or more preparations, compounds, mix-  
24 tures, or substances of an aggregate weight of one ounce or more  
25 containing a schedule VIA controlled substance;

26 (3) possesses

27 (A) any amount of a schedule IA or IIA controlled  
28 substance;

29 (B) 25 or more tablets, ampules, or syrettes

1 containing a schedule IIIA or IVA controlled substance;

2 (C) one or more preparations, compounds, mixtures, or  
3 substances of an aggregate weight of three grams or more contain-  
4 ing a schedule IIIA or IVA controlled substance;

5 (D) 50 or more tablets, ampules, or syrettes contain-  
6 ing a schedule VA controlled substance;

7 (E) one or more preparations, compounds, mixtures, or  
8 substances of an aggregate weight of six grams or more containing  
9 a schedule VA controlled substance; or

10 (F) one or more preparations, compounds, mixtures, or  
11 substances of an aggregate weight of one pound or more containing  
12 a schedule VIA controlled substance;

13 (4) being 18 years of age or older, possesses a schedule  
14 IIIA, IVA, VA, or VIA controlled substance within the grounds of or on  
15 a parking lot immediately adjacent to a public or private preschool,  
16 elementary, junior high, or secondary school;

17 (5) knowingly keeps or maintains any store, shop, ware-  
18 house, dwelling, building, vehicle, boat, aircraft, or other structure  
19 or place which is used for keeping or distributing controlled sub-  
20 stances in violation of a felony offense under this chapter or  
21 AS 17.30;

22 (6) makes, delivers, or possesses a punch, die, plate,  
23 stone, or other thing which prints, imprints, or reproduces a trade-  
24 mark, trade name, or other identifying mark, imprint, or device of  
25 another or any likeness of any of these upon a drug, drug container,  
26 or labeling so as to render the drug a counterfeit substance;

27 (7) knowingly uses in the course of the manufacture or  
28 distribution of a controlled substance a registration number which is  
29 fictitious, revoked, suspended, or issued to another person;

1 (8) knowingly furnishes false or fraudulent information in  
2 or omits material information from any application, report, record, or  
3 other document required to be kept or filed under AS 17.30;

4 (9) obtains or attempts to obtain possession of a con-  
5 trolled substance by misrepresentation, fraud, forgery, deception or  
6 subterfuge; or

7 (10) affixes a false or forged label to a package or other  
8 container containing any controlled substance.

9 \* Sec. 3. AS 11.71.100(a) is amended to read:

10 (a) The Controlled Substances Advisory Committee is established  
11 in the Department of Law. The committee consists of

12 (1) the attorney general or the attorney general's desig-  
13 nee;

14 (2) the commissioner of health and social services or the  
15 commissioner's designee;

16 (3) the commissioner of public safety or the commissioner's  
17 designee;

18 (4) the president of the Board of Pharmacy or the designee  
19 of the president who shall also be a member of the Board of Pharmacy;

20 (5) a peace officer appointed by the governor after consul-  
21 tation with the Alaska Association of Chiefs of Police;

22 (6) a physician appointed by the governor;

23 (7) a psychiatrist appointed by the governor; [AND]

24 (8) two individuals appointed by the governor; and

25 (9) the commissioner of the Department of Corrections or  
26 his designee.

27 \* Sec. 4. AS 11.73.060(a) is amended to read:

28 (a) Property used during or in aid of a violation of this chap-  
29 ter may be forfeited to the state to the extent permitted under and in

1 accordance with the provisions of AS 17.30.110 -- 17.30.126 and  
2 AS 09.50.

3 \* Sec. 5. AS 11.73.099(3) is amended to read:

4 (3) "imitation controlled substance" means a substance con-  
5 taining ephedrine, ephedrine sulfate, pseudoephedrine, pseudoephedrine  
6 hydrochloride, phenylpropanolamine, caffeine, theophylline, lidocaine,  
7 procaine, tetracaine, dyclonine, acetaminophen, salicylamide, doxyla-  
8 mine, diphenhydramine, pheniramine, chlorpheniramine, or pryrlamine,  
9 or their salts, that is not a controlled substance, and that by dosage  
10 unit appearance (including color, shape, size, and markings) and [OR]  
11 by representations would lead a reasonable person to believe that the  
12 substance is a controlled substance; the term "representations", as  
13 used in this paragraph, includes

14 (A) statements made by an owner or by anyone else in  
15 control of the substance concerning the nature of the substance,  
16 or its use or effect;

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

19 (C) whether the substance is packaged in a manner nor-  
20 mally used for controlled substances;

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

24 (E) the storage, packaging, presentation, display of  
25 or reference to a controlled substance with, near, or in connec-  
26 tion with the activity involving the imitation controlled sub-  
27 stance.

28 \* Sec. 6. AS 17.30.110 is repealed and reenacted to read:

29 Sec. 17.30.110. ITEMS SUBJECT TO FORFEITURE. (a) The following

1 property is subject to forfeiture under AS 09.50 and AS 17.30.126:

2 (1) a controlled substance which has been manufactured,  
3 distributed, dispensed, acquired, or possessed in violation of this  
4 chapter or AS 11.71;

5 (2) raw materials, products, and equipment which are used  
6 or intended for use in manufacturing, distributing, compounding,  
7 processing, delivering, importing, or exporting a controlled substance  
8 in violation of this chapter or AS 11.71;

9 (3) property which is used or intended for use as a con-  
10 tainer for property described in (1) or (2) of this section;

11 (4) a conveyance, including but not limited to aircraft,  
12 vehicles, or vessels, which has been used or is intended for use in  
13 transporting or in any manner in facilitating the transportation,  
14 sale, receipt, possession, or concealment of property described in (1)  
15 or (2) of this section in violation of a felony offense under this  
16 chapter or AS 11.71;

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

20 (6) money, securities, negotiable instruments, or other  
21 property

22 (A) furnished by a person in exchange for a controlled  
23 substance in violation of this chapter or AS 11.71;

24 (B) used to facilitate a violation of this chapter or  
25 AS 11.71; or

26 (C) which constitute proceeds derived from a violation  
27 of this chapter or AS 11.71; and

28 (7) a firearm carried during, or used in furtherance of a  
29 violation of this chapter or AS 11.71.

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(b) In this section, "violation of this chapter or AS 11.71" includes an attempt or solicitation under AS 11.31 to violate this chapter or AS 11.71.

\* Sec. 7. AS 17.30.126 is amended by adding a new subsection to read:

(c) As used in this section, "controlled substance" includes "imitation controlled substance" as defined in AS 11.73.099.

\* Sec. 8. AS 17.30.900 is amended by adding a new subsection to read:

(c) In this chapter, "violation of this chapter or AS 11.71" includes an attempt or solicitation under AS 11.31 to violate this chapter or AS 11.71.

\* Sec. 9. AS 17.30.112 -- 17.30.124 are repealed.