

1 IN THE SENATE

BY FISCHER

2

SENATE BILL NO. 331

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND 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 11 is amended by adding a new chapter to read:

9

CHAPTER 74. DRUG PARAPHERNALIA.

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Sec. 11.74.010. USE AND POSSESSION OF DRUG PARAPHERNALIA. A

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person may not use, or possess with intent to use, drug paraphernalia

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to plant, propagate, cultivate, grow, harvest, manufacture, compound,

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convert, produce, process, prepare, test, analyze, pack, repack,

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store, contain, conceal, inject, ingest, inhale, or otherwise intro-

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duce into the human body a controlled substance in violation of

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AS 11.71 or AS 17.30.

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Sec. 11.74.020. MANUFACTURE AND DELIVERY OF DRUG PARAPHERNALIA.

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A person may not deliver, possess with intent to deliver, or manufac-

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ture with intent to deliver, drug paraphernalia, knowing, or under

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circumstances where one reasonably should know, that it will be used

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to plant, propagate, cultivate, grow, harvest, manufacture, compound,

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convert, produce, process, prepare, test, analyze, pack, repack,

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store, contain, conceal, inject, ingest, inhale, or otherwise intro-

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duce into the human body a controlled substance in violation of

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AS 11.71 or AS 17.30.

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Sec. 11.74.030. ADVERTISEMENT OF DRUG PARAPHERNALIA. A person

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may not place in a newspaper, magazine, handbill, or other publication

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any advertisement, knowing, or under circumstances where one reason-

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ably should know, that the purpose of the advertisement, in whole or

1 in part, is to promote the sale of objects designed or intended for
2 use as drug paraphernalia.

3 Sec. 11.74.040. EVIDENCE CONSIDERED. In determining whether an
4 object is drug paraphernalia, a court or other authority shall consid-
5 er, in addition to all other logically relevant factors, the follow-
6 ing:

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

9 (2) prior convictions, if any, of an owner, or of a person
10 in control of the object, under state or federal law relating to a
11 controlled substance;

12 (3) the proximity of the object, in time and space, to a
13 direct violation of AS 11.71 or AS 17.30;

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

15 (5) the existence of residue of a controlled substance on
16 the object;

17 (6) direct or circumstantial evidence of the intent of an
18 owner, or of a person in control of the object, to deliver it to a
19 person whom the owner or the person in control of the object knows, or
20 should reasonably know, intends to use the object to facilitate a
21 violation of AS 11.71 or AS 17.30; the innocence of an owner, or of a
22 person in control of the object, as to a direct violation of AS 11.71
23 or AS 17.30 does not prevent a finding that the object is intended for
24 use, or designed for use as drug paraphernalia;

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

27 (8) descriptive materials accompanying the object that
28 explain or depict its use;

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

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

2 (11) whether the owner, or the person having control of the
3 object, is a legitimate supplier of like or related items to the
4 community, such as a distributor or dealer of tobacco products;

5 (12) direct or circumstantial evidence of the ratio of sales
6 of the object to the total sales of the business enterprise;

7 (13) the existence and scope of legitimate uses for the
8 object in the community;

9 (14) expert testimony concerning its use.

10 Sec. 11.74.050. PENALTIES. (a) Except as provided in (b) of
11 this section, a person who violates this chapter is guilty of a class
12 A misdemeanor.

13 (b) A person 18 years of age or over who violates AS 11.74.020
14 by delivering drug paraphernalia to a person under 19 years of age who
15 is at least three years younger than the person delivering the drug
16 paraphernalia is guilty of a class C felony.

17 Sec. 11.74.060. FORFEITURES. (a) Drug paraphernalia may be
18 forfeited to the state either upon conviction of the defendant of a
19 violation of AS 11.74.010 - 11.74.020 or upon judgment of a court in a
20 separate civil proceeding in rem that an item of drug paraphernalia
21 was used in a violation of AS 11.74.010 - 11.74.020.

22 (b) It is not a defense in an in rem proceeding brought under
23 this section that a criminal proceeding is pending or has resulted in
24 a conviction or acquittal of a person of a violation of AS 11.74.010 -
25 11.74.020, or that a criminal proceeding has been dismissed, or that
26 the item of drug paraphernalia has not been forfeited in any criminal
27 proceeding, or that multiple actions are pending.

28 Sec. 11.74.070. SEIZURE OF DRUG PARAPHERNALIA. (a) Drug para-
29 phernalia subject to forfeiture under this section may be seized by a

1 peace officer upon an order issued by a court having jurisdiction over
2 the property upon a showing of probable cause that the paraphernalia
3 is subject to forfeiture under AS 11.74.060(a).

4 (b) Seizure without a court order may be made if

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

7 (2) the paraphernalia subject to seizure has been the
8 subject of a prior judgment in favor of the state in a criminal pro-
9 ceeding or civil proceeding in rem based on a violation of AS 11.74.-
10 010 - 11.74.020; or

11 (3) there is probable cause that the paraphernalia was or
12 is being used in violation of AS 11.74.010 - 11.74.020 and the proper-
13 ty is easily movable; paraphernalia seized under this paragraph may
14 not be held for more than 48 hours or until an order continuing the
15 seizure may be applied for and issued by a court, whichever is
16 earlier.

17 Sec. 11.74.080. CUSTODY. Paraphernalia taken or detained under
18 AS 11.74.060(a) is in the custody of the Department of Public Safety
19 subject only to an order or decree of the court having jurisdiction
20 over the forfeiture proceedings. If property is seized under this
21 chapter, the Department of Public Safety may

22 (1) place the paraphernalia under seal;

23 (2) remove the paraphernalia to a place designated by the
24 court;

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

27 (b) Within 10 days of a seizure under this section, the state
28 shall inventory the paraphernalia seized and its contents and appraise
29 the value of the items seized.

1 Sec. 11.74.090. DISPOSITION OF PARAPHERNALIA. Paraphernalia
2 forfeited under this section shall be disposed of according to court
3 order. The court may order the Department of Public Safety to

4 (1) destroy paraphernalia harmful to the public;

5 (2) take custody of the paraphernalia and use it in the
6 enforcement of this chapter, AS 11.71, or AS 17.30, or transfer it to
7 another agency of the state for a use designated by the court in
8 furtherance of the administration of justice;

9 (3) take custody of the paraphernalia and remove it for
10 disposition in accordance with law; or

11 (4) forward it to the United States Drug Enforcement Admin-
12 istration for disposition.

13 Sec. 11.74.100. DEFINITIONS. In this chapter

14 (1) "controlled substance" has the meaning given in AS 11.-
15 71.900;

16 (2) "drug paraphernalia" and "paraphernalia" mean equip-
17 ment, products, and materials of any kind that are used or intended
18 for use in planting, propagating, cultivating, growing, harvesting,
19 manufacturing, compounding, converting, producing, processing, prepar-
20 ing, testing, analyzing, packaging, repackaging, storing, containing,
21 concealing, injecting, ingesting, inhaling, or otherwise introducing
22 into the human body a controlled substance in violation of AS 11.71 or
23 AS 17.30; "drug paraphernalia" or "paraphernalia" includes

24 (A) kits used, designed for use, or intended for use
25 in planting, propagating, cultivating, growing or harvesting of
26 any species of plant that is a controlled substance or from which
27 a controlled substance can be derived;

28 (B) kits used, designed for use, or intended for use
29 in manufacturing, compounding, converting, producing, processing,

- 1 or preparing controlled substances;
- 2 (C) isomerisation devices used, designed for use, or
- 3 intended for use in increasing the potency of a species of plant
- 4 that is a controlled substance;
- 5 (D) testing equipment used, designed for use, or
- 6 intended for use in identifying, or in analysing the strength,
- 7 effectiveness, or purity of controlled substances;
- 8 (E) scales and balances used, designed for use, or
- 9 intended for use in weighing or measuring controlled substances;
- 10 (F) diluents and adulterants, such as quinine hydro-
- 11 chloride, mannitol, mannite, dextrose, and lactose, used, de-
- 12 signed for use, or intended for use in cutting controlled sub-
- 13 stances;
- 14 (G) separation gins and sifters used, designed for
- 15 use, or intended for use in removing twigs and seeds from, or in
- 16 otherwise cleaning or refining, marijuana;
- 17 (H) blenders, bowls, containers, spoons, and mixing
- 18 devices used, designed for use, or intended for use in compound-
- 19 ing controlled substances;
- 20 (I) capsules, balloons, envelopes, and other contain-
- 21 ers used, designed for use, or intended for use in packaging
- 22 small quantities of controlled substances;
- 23 (J) containers and other objects used, designed for
- 24 use, or intended for use in storing or concealing controlled
- 25 substances;
- 26 (K) hypodermic syringes, needles, and other objects
- 27 used, designed for use, or intended for use in parenterally
- 28 injecting controlled substances into the human body;
- 29 (L) objects used, designed for use, or intended for

1 use in ingesting, inhaling, or otherwise introducing marijuana,
2 cocaine, hashish, or hashish oil into the human body, such as
3 (i) metal, wooden, acrylic, glass, stone, plas-
4 tic, or ceramic pipes with or without screens, permanent
5 screens, hashish heads, or punctured metal bowls;
6 (ii) water pipes;
7 (iii) carburetion tubes and devices;
8 (iv) smoking and carburetion masks;
9 (v) roach clips, meaning objects used to hold
10 burning material, such as a marijuana cigarette, that has
11 become too small or too short to be held in the hand;
12 (vi) miniature cocaine spoons and cocaine vials;
13 (vii) chamber pipes;
14 (viii) carburetor pipes;
15 (ix) electric pipes;
16 (x) air-driven pipes;
17 (xi) chillums;
18 (xii) bongs;
19 (xiii) ice pipes or chillers.
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