

Original sponsor: Fischer

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2

CS FOR SENATE BILL NO. 331 (HESS)

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; and providing

7

for an effective date."

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

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\* Section 1. AS 11 is amended by adding a new chapter to read:

10

CHAPTER 74. DRUG PARAPHERNALIA.

11

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,

14

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

1 reasonably should know, that the purpose of the advertisement, in  
2 whole or in part, is to promote the sale of objects designed or in-  
3 tended for use as drug paraphernalia.

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

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

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

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

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

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

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

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

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

- 1 (9) national and local advertising concerning its use;  
2 (10) the manner in which the object is displayed for sale;  
3 (11) whether the owner, or the person having control of the  
4 object, is a legitimate supplier of like or related items to the  
5 community, such as a distributor or dealer of tobacco products;  
6 (12) direct or circumstantial evidence of the ratio of sales  
7 of the object to the total sales of the business enterprise;  
8 (13) the existence and scope of legitimate uses for the  
9 object in the community;  
10 (14) expert testimony concerning its use.

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

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

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

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

29 Sec. 11.74.070. SEIZURE OF DRUG PARAPHERNALIA. (a) Drug

1 paraphernalia subject to forfeiture under this section may be seized  
2 by a peace officer upon an order issued by a court having jurisdiction  
3 over the property upon a showing of probable cause that the parapher-  
4 nalia is subject to forfeiture under AS 11.74.060(a).

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

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

8 (2) the paraphernalia subject to seizure has been the  
9 subject of a prior judgment in favor of the state in a criminal pro-  
10 ceeding or civil proceeding in rem based on a violation of AS 11.74.-  
11 010 - 11.74.020; or

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

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

23 (1) place the paraphernalia under seal;

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

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

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

1 the value of the items seized.

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

5 (1) destroy paraphernalia harmful to the public;

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

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

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

14 Sec. 11.74.100. DEFINITIONS. In this chapter

15 (1) "controlled substance" has the meaning given in AS 11.-  
16 71.900;

17 (2) "drug paraphernalia" and "paraphernalia" mean equip-  
18 ment, products, and materials of any kind that are used, designed for  
19 use, or intended for use in planting, propagating, cultivating, grow-  
20 ing, harvesting, manufacturing, compounding, converting, producing,  
21 processing, preparing, testing, analyzing, packaging, repackaging,  
22 storing, containing, concealing, injecting, ingesting, inhaling, or  
23 otherwise introducing into the human body a controlled substance in  
24 violation of AS 11.71 or AS 17.30; "drug paraphernalia" or "parapher-  
25 nalia" includes, but is not limited to,

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

1 (B) kits used, designed for use, or intended for use  
2 in manufacturing, compounding, converting, producing, processing,  
3 or preparing controlled substances;

4 (C) isomerization devices used, designed for use, or  
5 intended for use in increasing the potency of a species of plant  
6 that is a controlled substance;

7 (D) testing equipment used, designed for use, or  
8 intended for use in identifying, or in analyzing the strength,  
9 effectiveness, or purity of controlled substances;

10 (E) scales and balances used, designed for use, or  
11 intended for use in weighing or measuring controlled substances;

12 (F) diluents and adulterants, such as quinine hydro-  
13 chloride, mannitol, mannite, dextrose, and lactose, used, de-  
14 signed for use, or intended for use in cutting controlled sub-  
15 stances;

16 (G) blenders, bowls, containers, spoons, and mixing  
17 devices used, designed for use, or intended for use in compound-  
18 ing controlled substances;

19 (H) capsules, balloons, envelopes, and other contain-  
20 ers used, designed for use, or intended for use in packaging  
21 small quantities of controlled substances;

22 (I) containers and other objects used, designed for  
23 use, or intended for use in storing or concealing controlled  
24 substances;

25 (J) hypodermic syringes, needles, and other objects  
26 used, designed for use, or intended for use in parenterally  
27 injecting controlled substances into the human body;

28 (K) objects used, designed for use, or intended for  
29 use in ingesting, inhaling, or otherwise introducing cocaine,

1 hashish, or hashish oil into the human body, such as

2 (i) metal, wooden, acrylic, glass, stone, plas-  
3 tic, or ceramic pipes with or without screens, permanent  
4 screens, hashish heads, or punctured metal bowls;

5 (ii) water pipes;

6 (iii) carburetion tubes and devices;

7 (iv) smoking and carburetion masks;

8 (v) miniature cocaine spoons and cocaine vials;

9 (vi) chamber pipes;

10 (vii) carburetor pipes;

11 (viii) electric pipes;

12 (ix) air-driven pipes;

13 (x) chillums;

14 (xi) bongs;

15 (xii) ice pipes or chillers.

16 \* Sec. 2. AS 11.74.100(2), added by sec. 1 of this Act, is amended to  
17 read:

18 (2) "drug paraphernalia" and "paraphernalia" mean equip-  
19 ment, products, and materials of any kind that are used, designed for  
20 use, or intended for use in planting, propagating, cultivating, grow-  
21 ing, harvesting, manufacturing, compounding, converting, producing,  
22 processing, preparing, testing, analyzing, packaging, repackaging,  
23 storing, containing, concealing, injecting, ingesting, inhaling, or  
24 otherwise introducing into the human body a controlled substance in  
25 violation of AS 11.71 or AS 17.30; "drug paraphernalia" or "parapher-  
26 nalia" includes, but is not limited to,

27 (A) kits used, designed for use, or intended for use  
28 in planting, propagating, cultivating, growing or harvesting of  
29 any species of plant that is a controlled substance or from which

1 a controlled substance can be derived;

2 (B) kits used, designed for use, or intended for use  
3 in manufacturing, compounding, converting, producing, processing,  
4 or preparing controlled substances;

5 (C) isomerization devices used, designed for use, or  
6 intended for use in increasing the potency of a species of plant  
7 that is a controlled substance;

8 (D) testing equipment used, designed for use, or  
9 intended for use in identifying, or in analyzing the strength,  
10 effectiveness, or purity of controlled substances;

11 (E) scales and balances used, designed for use, or  
12 intended for use in weighing or measuring controlled substances;

13 (F) diluents and adulterants, such as quinine hydro-  
14 chloride, mannitol, mannite, dextrose, and lactose, used, de-  
15 signed for use, or intended for use in cutting controlled sub-  
16 stances;

17 (G) blenders, bowls, containers, spoons, and mixing  
18 devices used, designed for use, or intended for use in compound-  
19 ing controlled substances;

20 (H) 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 (I) containers and other objects used, designed for  
24 use, or intended for use in storing or concealing controlled  
25 substances;

26 (J) 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 (K) 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) miniature cocaine spoons and cocaine vials;

10 (vi) chamber pipes;

11 (vii) carburetor pipes;

12 (viii) electric pipes;

13 (ix) air-driven pipes;

14 (x) chillums;

15 (xi) bonges;

16 (xii) ice pipes or chillers;

17 (xiii) roach clips and similar objects used to hold  
18 burning material, such as a marijuana cigarette, that has  
19 become too small or too short to be held in the hand;

20 (L) separation gins and sifters used, designed for  
21 use, or intended for use in removing twigs and seeds from, or in  
22 otherwise cleaning or refining, marijuana.

23 \* Sec. 3. Section 2 of this Act takes effect on the later of

24 (1) the effective date of sec. 1 of this Act; or

25 (2) the effective date of an Act making the possession of any  
26 amount of marijuana a crime.

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