

**SB**

**173**

<TARGET><BILL>SB 173</BILL><SUBJECT>SB  
173</SUBJECT><COMM>HJUD28</COMM></TARGET>



28-LS1242\Y  
Strasbaugh  
4/15/14

**HOUSE CS FOR CS FOR SENATE BILL NO. 173( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-EIGHTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**

**Referred:**

**Sponsor(s): SENATORS MEYER, McGuire, Bishop, Gardner, Giessel, Ellis, Micciche, Kelly**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to a prohibition on the possession, offer, display, marketing,**  
2 **advertising for sale, or sale of illicit synthetic drugs."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **\* Section 1.** AS 17 is amended by adding a new chapter to read:

5 **Sec. 17.21.010. Illicit synthetic drugs.** (a) A person may not possess, offer,  
6 display, market, advertise for sale, or sell an illicit synthetic drug.

7 (b) A synthetic drug is illicit if

8 (1) the label

9 (A) is false or misleading;

10 (B) does not specify the identity of the substances contained in  
11 the synthetic drug; or

12 (C) does not specify the name and place of business of the  
13 manufacturer, packer, or distributor; and

14 (2) the synthetic drug has one or more of the following characteristics:

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(A) the packaging or labeling of the synthetic drug suggests that the user will achieve euphoria, a hallucination, mood enhancement, relaxation, stimulation, or another effect on the body;

(B) the name or packaging of the synthetic drug uses images or labels suggesting that it is a controlled substance or has the effect of a controlled substance;

(C) the synthetic drug resembles a controlled substance in appearance, in chemical structure, or composition;

(D) the synthetic drug is marketed or advertised for a particular use or purpose and the cost of the synthetic drug is disproportionately higher than other products marketed or advertised for the same or similar use or purpose;

(E) the synthetic drug contains a warning label stating or suggesting that the synthetic drug is in compliance with state laws regulating controlled substances;

(F) the synthetic drug is a product to which has been added a synthetic chemical or synthetic chemical compound that does not have a legitimate relationship to the advertised use of the product.

(c) It is an affirmative defense to an action for a violation of this section that a product is expressly exempted from or is expressly regulated under and is in compliance with state or federal law. In this subsection, "affirmative defense" has the meaning given in AS 11.81.900.

**Sec. 17.21.020. Exemption.** AS 17.21.010 does not apply to a synthetic drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs if the drug is plainly labeled "for investigational use only," and the investigational use is authorized by state or federal law.

**Sec. 17.21.030. Enforcement and penalties.** (a) The commissioner of public safety is responsible for enforcing this chapter and may

- (1) delegate that authority as appropriate; and
- (2) cooperate with the Department of Health and Social Services in

1 carrying out the commissioner's enforcement activities.

2 (b) This section does not limit the authority of a peace officer.

3 (c) A person who violates AS 17.21.010 is guilty of a violation, and, upon  
4 conviction, is punishable by a fine of not more than \$500.

5 (d) The provisions of this section are in addition to the remedies available  
6 under AS 45.50.471 - 45.50.561.

7 **Sec. 17.21.090. Definitions.** In this chapter, unless the context clearly requires  
8 otherwise,

9 (1) "controlled substance" has the meaning given in AS 11.71.900;

10 (2) "drug" has the meaning given in AS 17.20.370;

11 (3) "synthetic drug" means a substance that is

12 (A) a chemical or chemical compound intended, when  
13 introduced into the human body, to mimic or simulate the effect of a drug or  
14 controlled substance;

15 (B) in the form of

16 (i) a crystalline or powder product in crystalline, loose  
17 powder, block, tablet, or capsule form; or

18 (ii) plant material in granular, loose leaf, powder, or  
19 liquid form or used as a food additive; and

20 (C) that is not a controlled substance.

21 \* **Sec. 2.** AS 44.29.020 is amended by adding a new subsection to read:

22 (c) The Department of Health and Social Services shall cooperate with the  
23 Department of Public Safety in enforcement of the prohibition on the possession,  
24 offer, display, marketing, advertising, or sale of illicit synthetic drugs under AS 17.21.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
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(907) 465-3867 or 465-2450  
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Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 15, 2014

**SUBJECT:** Illicit synthetic drugs (HCS CSSB 173( ));  
Work Order No. 28-LS1242\Y)

**TO:** Senator Kevin Meyer  
Attn: Edra Morledge

**FROM:** Kathleen Strasbaugh  
Legislative Counsel

Please find enclosed the HCS CSSB 173( ) committee substitute that you requested. After speaking with Ms. Morledge about the issues raised in this memo, the change to a civil penalty was not made. The reasons are discussed below.

Switching to a "civil penalty" would have taken the proceeding out of the citation process and required the department to file a civil action. In the original version of the bill, SB 173 (ver. "A"), the penalty provision, AS 17.21.030(c), reads as follows: "(c) A person who violates AS 17.21.010 is guilty of a violation and, upon conviction, may be punished as provided in AS 12.55." *Id.* at page 3, lines 22 - 23.

As I understand it, the Public Defender Agency and the Office of Public Advocacy asserted that the reference to AS 12.55 raised questions about whether the penalties were criminal.<sup>1</sup> Apparently there was some concern that the mention of AS 12.55, the criminal sentencing statute, might suggest that a person is entitled to appointed counsel. In my opinion, the \$500 fine does not trigger the right to counsel.<sup>2</sup> The original version of the

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<sup>1</sup> In addition, each agency provided an indeterminate fiscal note on the grounds that the bill might "inadvertently include criminalizing the sale of some herbal remedies and other innocuous substances." Department of Administration, Fiscal Notes #2 and #3, March 14, 2014 (SJUD).

<sup>2</sup> In *Baker v. City of Fairbanks*, 471 P.2d 386 (Alaska 1970), the court defined "criminal prosecution" as that term is used in art. I of the Constitution the State of Alaska, as including (1) offenses for which a direct penalty may be incarceration, (2) offenses which may result in the loss of a valuable license, and (3) offenses for which the fine imposed is heavy enough to indicate criminality, because such a fine could be taken as a gauge of the ethical and social judgments of the community. A \$500 fine does not meet this threshold. I am unaware of a case where a person has been provided counsel at public expense when

bill was consistent with the preferred drafting convention used in numerous places throughout the Alaska Statutes. The original version of the bill also had the benefit of changing as the penalty for violations changes without the necessity of a major effort to seek out individual statutes that are intended, as this one is, to provide the same penalty as is provided in AS 12.55.<sup>3</sup> AS 12.55 also allows for differential sentencing for organizations.<sup>4</sup>

However, the wording was changed, and the Senate judiciary committee version of the bill was worded as follows: "(c) A person who violates AS 17.21.010 is guilty of a violation and, upon conviction, is punishable by a fine of not more than \$500." CSSB 173(JUD) (ver. "O"), page 3, lines 21 - 22. This language is also used in the enclosed draft.

A violation is an offense under the laws of the state. "Offense" is defined in AS 11.81.900(b)(40) as "conduct for which a sentence of imprisonment or fine is authorized; an offense is either a crime or a violation." A violation technically is not a civil penalty.<sup>5</sup> A violation is defined in AS 11.81.900(b):

- (65) "violation" is a noncriminal offense punishable only by a fine, but not by imprisonment or other penalty; conviction of a violation does not give rise to any disability or legal disadvantage based on conviction of a crime; a person charged with a violation is not entitled
  - (A) to a trial by jury; or
  - (B) to have a public defender or other counsel appointed at public expense to represent the person;

A crime is an offense for which a sentence of imprisonment can be imposed and can be either a felony or a misdemeanor. AS 11.81.900(b)(11). While a violation is an offense and is prosecuted in the criminal justice system, it is not a crime and the Constitution of the State of Alaska does not require a jury trial. *State v. Dutch Harbor Seafoods, Ltd*,

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being sentenced under AS 12.55 for a violation that did not involve or implicate in the future a loss of a valuable license.

<sup>3</sup> AS 12.55 provides the sentencing structure for offenses committed in Alaska. Offenses, consisting of crimes and noncriminal violations are processed in the criminal justice system and governed by this chapter. A specific penalty should only be included if one intends a punishment that is different than those provided in AS 12.55.

<sup>4</sup> Compare AS 12.55.035(b)(7) (fine for violation \$500) and AS 12.55.035(c) (\$25,000 for a violation, or three times the pecuniary gain to the defendant or loss caused by the defendant, whichever is greater).

<sup>5</sup> An example of a civil penalty scheme can be found in AS 17.20.315.

Senator Kevin Meyer  
April 15, 2014  
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965 P.2d 738, 739 and 741 - 42 (Alaska 1998) (finding no right to jury trial where potential fines of \$3000 or \$6000 are not heavy enough to denote criminality) *quoting Baker v. City of Fairbanks*, 471 P.2d 386, 402 (Alaska 1970). However, apparently there continues to be concern or confusion about the nature of a violation and whether it is an appropriate approach for the subject matter of the bill. To address this, the Department of Law suggested that the bill be amended to refer to a "civil penalty," and to identify the burden of proof as a "preponderance of the evidence," the civil burden of proof.

Following these suggestions would have resulted in converting the cases that result from this statute into civil actions. Law enforcement would not have been able to use the citation process under this arrangement. A full blown civil action would have been required.<sup>6</sup>

I was not sure what to do with the request to place the drug names in an uncodified provision. If the drug names were not codified, they could not have, in my opinion, remained an element of the offense, and would not have had the force of law. As I discussed with Ms. Morledge, the drug names have now simply been eliminated.

If I may be of further assistance, please advise.

KJS:lem  
14-197.lem

Enclosure

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<sup>6</sup> This is similar to a problem that developed after an amendment to the Court's Minor Offense Rule 3(g), which had to be corrected this year by SB 116.

# Alaska State Legislature



*Interim:*


716 West 4th Avenue, Room 410  
Anchorage, Alaska 99501  
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*Session:*

State Capitol Building, Room 518  
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## Senator Kevin Meyer Senate District L

TO: Representative Wes Keller, Chair  
House Judiciary Committee

FROM: Senator Kevin Meyer, Co-Chair  
Senate Finance Committee 

DATE: March 27, 2014

RE: Request to Schedule SB 173 <PENDING REFERRAL>

With this memorandum, I respectfully request the scheduling of CSSB 173(JUD), Prohibiting Illicit Synthetic Drugs, in the House Judiciary Committee – it is scheduled for the Senate floor on March 28, and will be referred to your committee following passage. Representative Millett is the sponsor of the companion bill, HB 362, which was heard by the committee on March 26, 2014. The Senate version is intended to be the vehicle. In response to the issues members raised during the hearing on HB 362, I will be presenting the committee with a committee substitute to be adopted as a work draft to address those concerns.

This legislation is intended to reduce, and ultimately eliminate, the purchasing, possession, and selling of synthetic illicit drugs in our state. The Municipality of Anchorage recently passed an ordinance that has been overwhelmingly successful in this endeavor, and this has encouraged me to make it a statewide policy. I appreciate your consideration of this important piece of legislation.

Attached to this memorandum please find:

- Sponsor Statement
- SB 173, Version 28-LS1242\O
- DPS Fiscal Note

- DOA – PDA Fiscal Note
- DOA – OPA Fiscal Note
- DHSS Fiscal Note
- Summary of Changes
- Bill History/Action
- Legal Memorandum dated 2/10/2014
- Anchorage Municipal Ordinance AO No. 2013-156
- City of Bangor, Maine Ordinance
- City of Wasilla Proposed Ordinance No. 14-17
- Letter of Support, Mayor Sullivan
- Resolution by Mat-Su Health Foundation
- Office of National Drug Control Policy Information on Synthetic Drugs
- NCSL Synthetic Drug Threats Research
- Federal Food and Drug Administration Office of Criminal Investigations Press Release

If you have any questions, please contact my staff member assigned to this bill, Edra Morledge at 465-6874.

# Alaska State Legislature



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## **Senator Kevin Meyer** Senate District L

### **SPONSOR STATEMENT** **SENATE BILL 173**

SB 173 intends to help solve the problem of the ever changing chemical make-up of synthetic drugs by targeting the packaging of the product, and is aimed not at what the illicit drug is, but what it *isn't*. According to the National Institute on Drug Abuse, labels on these products often claim that they contain "natural" psycho-active material taken from a variety of plants. Sold at smoke shops, and convenience stores as "incense" or "potpourri," easy access and the misperception that these products are "natural" and therefore harmless, have likely contributed to their popularity. SB 173 will make it illegal to sell these designer drugs that are packaged as "spice," "potpourri," or a variety of other misleading labels.

Senate Bill 173 would prohibit the offer, display, marketing, advertising for sale, or sale of illicit synthetic drugs. The Legislature has made several attempts to prohibit the use of synthetic illicit drugs by classifying certain known chemical compounds as controlled substances. Unfortunately, what we're seeing as a result of this and similar efforts by the federal government, is that manufacturers simply change the chemical compound slightly, thus evading law enforcement efforts.

With the passage of SB 173, it will be considerably more difficult, if not impossible, for the sale or distribution of these synthetic illicit drugs state-wide.

I encourage your support on SB 173.

# LEGAL SERVICES

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## MEMORANDUM

April 8, 2014

**SUBJECT:** CSSB 173(JUD): Sectional Summary  
(Work Order No. 28-LS1242\O)

**TO:** Senator Kevin Meyer  
Attn: Edra Morledge

**FROM:** Kathleen Strasbaugh  
Legislative Counsel

You have requested a new sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

**Section 1** sets out a new chapter regarding illicit synthetic drugs.

**AS 17.21.010(a)** prohibits the possession, offer, display, marketing, advertising for sale, or selling of illicit synthetic drugs.

**Sec. 17.21.010(b)** provides that a drug is illicit if

(1) its label is false or misleading, does not identify the substances contained in the drug, or the name and place of business of the manufacturer, packer or distributor and

(2) the synthetic drug has one or more of the following characteristics:

(A) the packaging suggests the user will achieve an altered mood, hallucination, or other effect,

(B) the name or packaging uses images suggesting that the product is or has the properties of a controlled substance,

(C) it resembles a controlled substance in appearance, chemical structure, or composition,

(D) it is marketed or advertised for a purpose but is disproportionately higher in cost than other products marketed for the same purpose,

(E) it has a warning label indicating that it is in compliance with state laws regulating controlled substances,

(F) it has a substance added to it that does not have a legitimate relationship to the advertised use,

(G) it has one of an extensive list of street names.

Senator Kevin Meyer

April 8, 2014

Page 2

**AS 17.21.010(c)** provides an affirmative defense if the synthetic drug is expressly regulated under and in compliance with a federal law.

**Sec. 17.21.020** provides an exemption for investigative use by qualified experts.

**Sec. 17.21.030** identifies the enforcement authority for the chapter and that the penalty is a fine for violation.

**Sec. 17.21.090** sets out definitions for the chapter.

**Section 2** requires the Department of Health and Social Services to cooperate with the Department of Public Safety in enforcing the provisions of the chapter.

If I may be of further assistance, please advise.

KJS:ray

14-165.ray

## CSSB 173 (JUD) - Prohibit Illicit Synthetic Drugs

### Summary of Changes to 28-LS1242\O

Page, Line	Version 'A'	Version 'O'
Page 1, Line 1	"An Act relating to prohibition on the offer, display, marketing, advertising for sale, or sale of illicit synthetic drugs. "	Added " <u>possession</u> " to the list of prohibited actions
Page 1, Line 5	(a) "A person may not offer, display..."	Added " <u>possess</u> " to the list of prohibited actions
Page 2, Line 16-17	(F) "the owner or person in control of the synthetic drug uses evasive tactics to avoid detection by law enforcement authorities"	Removed this subsection, re-lettered remaining subsections
Page 2, Line 19	(H) "the synthetic drug has one or more of the following..."	(G) changed to "the synthetic drug <u>is labeled as or</u> has one or more of the following..."
Page 3, Lines 21-22	(c) A person who violates 17.21.010 is guilty of a violation and, upon conviction, may be punished as provided in AS 12.55.	(c) A person who violates AS 17.21.010 is guilty of a violation and, upon conviction, is punishable by a fine of not more than \$500.

1. Added the word "possession to the list of prohibited actions
2. Added the word "possess" to the list of prohibited actions
3. Removed the previous section AS 17.21.010 (b) (2) (F)
4. Added the words "is labeled as or" to make it clear that the packaging label would have one of the following listed names
5. Put the specific fine in language to address concerns of the Public Defenders Agency and the Office of Public Advocacy – this explicit change zeroed out the fiscal note

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSSB 173(JUD)  
 Fiscal Note Number: 1  
 (S) Publish Date: 3/14/14

Identifier: SB173CS(JUD)-DPS-DET-03-03-14  
 Title: SYNTHETIC DRUGS  
 Sponsor: MEYER  
 Requester: Senate Judiciary

Department: Department of Public Safety  
 Appropriation: Alaska State Troopers  
 Allocation: Alaska State Trooper Detachments  
 OMB Component Number: 2325

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2015 Request	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>	<b>FY 2015</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
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**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? **No**  
 If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Initial Version

Prepared By: Lt. Rodney Dial	Phone: (907)247-4480
Division: Alaska State Troopers	Date: 03/03/2014 03:45 PM
Approved By: Gary Folger, Commissioner	Date: 03/03/14
Agency: Department of Public Safety	

**FISCAL NOTE ANALYSIS #1**

**STATE OF ALASKA  
2014 LEGISLATIVE SESSION**

**BILL NO. CSSB 173(JUD)**

**Analysis**

This bill would make it unlawful to offer, display, market, advertise for sale, or sell illicit synthetic drugs by making it a violation punishable by a \$500 fine.

This bill would not change the Alaska State Troopers' enforcement efforts. Individuals found in violation of the law would be issued a citation as is currently done for other offenses that are defined as violations. Additionally, it is anticipated that most citations would be issued by municipal law enforcement agencies where many of the shops currently selling these substances are located.

Therefore, it is expected that passage of this bill would have no fiscal impact to the Department of Public Safety.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version:	CSSB 173(JUD)
Fiscal Note Number:	2
(S) Publish Date:	3/14/2014

Identifier: SB173CS(JUD)-DOA-PDA-03-17-14  
 Title: SYNTHETIC DRUGS  
 Sponsor: MEYER  
 Requester: Senate Finance

Department: Department of Administration  
 Appropriation: Legal and Advocacy Services  
 Allocation: Public Defender Agency  
 OMB Component Number: 1631

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

<b>Change in Revenues</b>								
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**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 (separate supplemental appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

**Estimated CAPITAL (FY2015) cost:** 0.0 (separate capital appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
 If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Updated for committee substitute.
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Prepared By: Quinlan Steiner, Public Defender  
 Division: Public Defender Agency  
 Approved By: Curtis Thayer, Commissioner  
 Agency: Department of Administration

Phone: (907)334-4414  
 Date: 03/17/2014 09:00 AM  
 Date: 03/17/14

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSSB 173(JUD)

**Analysis**

SB173 adds a new chapter to AS 17 making it a violation to display, advertise, or sell substances defined by the chapter as "illicit synthetic substances."

The Agency does not anticipate any financial impact from this legislation. The agency, therefore, submits a zero fiscal note.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSSB 173(JUD)  
Fiscal Note Number: 2  
(S) Publish Date: 3/14/14

Identifier: SB173CS(JUD)-DOA-PDA-02-28-14  
Title: SYNTHETIC DRUGS  
Sponsor: MEYER  
Requester: Senate Judiciary

Department: Department of Administration  
Appropriation: Legal and Advocacy Services  
Allocation: Public Defender Agency  
OMB Component Number: 1631

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2015 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
<b>OPERATING EXPENDITURES</b>	<b>FY 2015</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
Personal Services	***		***	***	***	***	***
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	***	0.0	***	***	***	***	***

**Fund Source (Operating Only)**

None							
<b>Total</b>	***	0.0	***	***	***	***	***

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
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Estimated SUPPLEMENTAL (FY2014) cost: 0.0 (separate supplemental appropriation required)  
*(discuss reasons and fund source(s) in analysis section)*

Estimated CAPITAL (FY2015) cost: 0.0 (separate capital appropriation required)  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Initial Version
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Prepared By: <u>Quinlan Steiner, Public Defender</u>	Phone: <u>(907)334-4414</u>
Division: <u>Public Defender Agency</u>	Date: <u>02/28/2014 03:15 PM</u>
Approved By: <u>Curtis Thayer, Commissioner</u>	Date: <u>02/28/14</u>
Agency: <u>Department of Administration</u>	

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSSB 173(JUD)

**Analysis**

SB173 adds a new chapter to AS 17 criminalizing the display, advertising or sale of substances defined by the chapter as "illicit synthetic substances."

The parameters for identifying a substance as an "illicit synthetic drug" are overly broad and may inadvertently include criminalizing the sale of some herbal remedies and other innocuous substances.

The Public Defender Agency cannot accurately predict the fiscal impact of this legislation, and therefore submits an indeterminate fiscal note.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version:	CSSB 173(JUD)
Fiscal Note Number:	3
(S) Publish Date:	3/14/2014

Identifier: SB173CS(JUD)-DOA-OPA-03-17-14  
 Title: SYNTHETIC DRUGS  
 Sponsor: MEYER  
 Requester: Senate Finance

Department: Department of Administration  
 Appropriation: Legal and Advocacy Services  
 Allocation: Office of Public Advocacy  
 OMB Component Number: 43

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015	Included in	Out-Year Cost Estimates					
	Appropriation Requested	Governor's FY2015 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>	<b>FY 2015</b>	<b>FY 2015</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

<b>Change in Revenues</b>								
---------------------------	--	--	--	--	--	--	--	--

**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? N/A  
 If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Updated for new committee substitute.
---------------------------------------

Prepared By:	Richard Allen, Director	Phone:	(907)269-3504
Division:	Office of Public Advocacy	Date:	03/17/2014 08:30 PM
Approved By:	Curtis Thayer, Commissioner	Date:	03/17/14
Agency:	Department of Administration		

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSSB173 (JUD)

**Analysis**

CSSB173 adds a new chapter to AS.17 criminalizing the display, advertising, or sale of substances defined by the chapter as "illicit synthetic substances."

The Office of Public Advocacy does not anticipate a financial impact from this legislation and therefore submits a zero fiscal note.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSSB 173(JUD)  
Fiscal Note Number: 3  
(S) Publish Date: 3/14/14

Identifier: SB173CS(JUD)-DOA-OPA-02-28-14  
Title: SYNTHETIC DRUGS  
Sponsor: MEYER  
Requester: Senate Judiciary

Department: Department of Administration  
Appropriation: Legal and Advocacy Services  
Allocation: Office of Public Advocacy  
OMB Component Number: 43

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
			FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>	***	***	***	***	***	***	***
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	***	0.0	***	***	***	***	***

**Fund Source (Operating Only)**

None							
<b>Total</b>	***	0.0	***	***	***	***	***

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
---------------------------	--	--	--	--	--	--	--

**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 (separate supplemental appropriation required)  
(discuss reasons and fund source(s) in analysis section)

**Estimated CAPITAL (FY2015) cost:** 0.0 (separate capital appropriation required)  
(discuss reasons and fund source(s) in analysis section)

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Initial Version

Prepared By: Richard Allen, Director	Phone: (907)269-3504
Division: Office of Public Advocacy	Date: 02/28/2014 06:10 PM
Approved By: Curtis Thayer, Commissioner	Date: 02/28/14
Agency: Department of Administration	

**FISCAL NOTE ANALYSIS #3**

**STATE OF ALASKA  
2014 LEGISLATIVE SESSION**

**BILL NO. CSSB 173(JUD)**

**Analysis**

SB173 adds a new chapter to AS 17 criminalizing the display, advertising or sale of substances defined by the chapter as "illicit synthetic substances."

The parameters for identifying a substance as an "illicit synthetic drug" are overly broad and may inadvertently include criminalizing the sale of some herbal remedies and other innocuous substances.

The Office of Public Advocacy cannot accurately predict the fiscal impact of this legislation and therefore submits an indeterminate fiscal note.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSSB 173(JUD)  
Fiscal Note Number: 4  
(S) Publish Date: 3/14/14

Identifier: SB173CS(JUD)-DHSS-BHA-02-28-14  
Title: SYNTHETIC DRUGS  
Sponsor: MEYER  
Requester: Senate Judiciary Committee

Department: Department of Health and Social Services  
Appropriation: Behavioral Health  
Allocation: Behavioral Health Administration  
OMB Component Number: 2665

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

<b>Change in Revenues</b>								
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**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Initial Version
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Prepared By:	Barbara Henjum, Acting Director	Phone:	(907)269-3410
Division:	Behavioral Health	Date:	02/27/2014 05:00 PM
Approved By:	Sarah Woods, Deputy Director, Finance & Management Services	Date:	02/28/14
Agency:	Health & Social Services		

FISCAL NOTE ANALYSIS #4

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSSB 173(JUD)

**Analysis**

CS for Senate Bill 173 provides for a prohibition on the offer, display, marketing, advertising for sale, or sale of illicit drugs. The overall intent of this bill is to place prohibitions on the marketing and sale of a wide and growing number of illicit synthetic drugs, thereby reducing the harmful effects of these drugs on Alaska citizens and communities.

As written, the Department of Health and Social Services will be in a secondary role to assist and cooperate with the Department of Public Safety in enforcement of this act. At this time, it appears that DHSS would be available to assist with education, notification to the Department of Public Safety of possible violations and other support roles, without the need for additional resources.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 28, 2014

**SUBJECT:** HB 362: House Judiciary Committee questions  
(Work Order No. 28-LS1538\A)

**TO:** Senator Kevin Meyer  
Attn: Edra Morledge

**FROM:** Kathleen Strasbaugh  
Legislative Counsel

You have asked for answers to questions posed by members of the House Judiciary Committee concerning HB 362, which would prohibit the sale and marketing of illicit synthetic drugs. To the extent that a question raises legal issues, I have answered briefly below.

**1. "Does there need to be the word "or" at the end of line 18 on page 2 to be clear that only ONE needs to be met from 17.21.010 (b) (2)?"**

The answer is no. The lead-in language at page 1, line 14, clearly states that the synthetic drug must have "one or more of the following characteristics." While it is not needed, the insertion of "or" would probably not change the meaning or interpretation of the paragraph.

**2. "Is the language on page 3, line 17, "(1) delegate the authority as appropriate;" too broad? Does it need to specify what is being delegated and to whom? Can the enforcement be delegated to another agency or department? Does this language present constitutional issues? Should we limit the delegation of authority?"**

This language is the same language used in AS 17.20.132 with respect to the commissioner of health and social service's enforcement authority. Generally, it is assumed that a commissioner will delegate detailed execution of a statute to the appropriate subordinate officials within the commissioner's authority. This is a different sort of delegation than the unguided delegation of the legislature's appropriation authority that the Alaska Supreme Court found unconstitutional in *State v. Fairbanks North Star Borough*, 736 P. 2d 1140 (Alaska 1987).

**3. "Can we make it clear in the penalty section (page 3, lines 21-22), that the violation is for each individual package?"**

In my opinion, it is not necessary to clarify this, but it could be done if you wish. At times the legislature has done this. *See, e.g.*, AS 11.61.127(c), penalizing each unlawful image.

**4. "Can we make it clear in the penalty section who is the "person" that violates AS 17.21.010? Is it the person that possesses it, the manufacturer, the packager, the retailer? Which is the person that is committing the crime?"**

The use of the term "person" is standard in our statutes. In AS 17.21.010, a person who possesses, a person who offers, a person who displays, a person who advertises for sale, or a person who sells can be in violation of the law.

**5. "Is there a definition for "false or misleading?" Should there be?"**

The phrase "false or misleading" is used numerous times in statute, including in the AS 17.20 concerning the labelling and advertising of drugs, cosmetics, and devices, and in AS 45.50.471 - 45.50.561 concerning unlawful trade practices. The phrase is not defined, nor are the individual words. When a term is undefined, a court will use the common, ordinary meaning of the words to interpret the statute. In my opinion, these terms do not need to be defined.

**6. "What prevents a person from possessing, offering, displaying, marketing, advertising, or selling a synthetic drug that does NOT meet one from both AS 17.21.010 (a) and (b)? Could a manufacturer/packager list exactly what is in the product and not be in violation of this new law?"**

It is true that if a substance does not meet any of the criteria in AS 17.21.010(b)(1), the possession, offer, display, advertising for sale, or sale of an illicit synthetic drug would not be illicit under the statute. I believe there is some factual information in the record as to why the purveyors of these products find it disadvantageous to comply with such requirements. I would also note that a purveyor of a product may not be able to prove to the federal Food and Drug Administration that the product is safe for human consumption if it is labelled to disclose its real purpose or its true contents.

**7. "Why is this a civil penalty rather than a misdemeanor or other criminal infraction? Why make it a violation?"**

This is a policy choice. A violation is an offense under the criminal laws of the state. "Offense" is defined in AS 11.81.900(b)(40) as "conduct for which a sentence of imprisonment or fine is authorized; an offense is either a crime or a violation." And to

clarify, a violation technically is not a civil penalty.<sup>1</sup> A violation is defined in AS 11.81.900(b):

(65) "violation" is a noncriminal offense punishable only by a fine, but not by imprisonment or other penalty; conviction of a violation does not give rise to any disability or legal disadvantage based on conviction of a crime; a person charged with a violation is not entitled  
(A) to a trial by jury; or  
(B) to have a public defender or other counsel appointed at public expense to represent the person;<sup>[2]</sup>

A crime is an offense for which a sentence of imprisonment can be imposed and can be either a felony or a misdemeanor. AS 11.81.900(b)(11). While a violation is an offense and is prosecuted in the criminal justice system, it is not a crime and the Constitution of the State of Alaska does not require a jury trial. *State v. Dutch Harbor Seafoods, Ltd*, 965 P.2d 738, 739 and 741 - 42 (Alaska 1998) (finding no right to jury trial where potential fines of \$3000 or \$6000 not heavy enough to denote criminality) quoting *Baker v. City of Fairbanks*, 471 P.2d 386, 402 (Alaska 1970).

In regard to the penalty, I would recommend that AS 17.21.030 be amended so that it simply notes that the penalty is a violation, punishable under AS 12.55, as we do with other similar offenses. This change will not convert the violation to a crime, but it will assure uniformity of treatment of violations, as provided in AS 12.55.035.

**8. "Under AS 17.21.010 (b) (2) (G), beginning on page 2, line 19, do the words "the following street names" present a problem in proving such a "street name?" Would it be better to clarify that just the packaging/label must have the name on it?"**

It may be that the purveyor of the product represents that the product has one of the listed street names but the product is not otherwise labelled - keeping the present language would allow either type of conduct to be prosecuted, in one case based on the labelling, and in the other, based on the marketing or representation. However, it might be useful to add "or packaging" to AS 17.21.010(b)(1) (page 1, line 8) to avoid a problem of interpretation with respect to whether the term "label" includes an image that conveys misleading information or, in this case, resembles a product with a street name.

---

<sup>1</sup> An example of a civil penalty scheme can be found in AS 17.20.315.

<sup>2</sup> Infraction is a term used in Title 28 (motor vehicles) for a non criminal offense. In AS 12.25 (citations) and AS 12.55 (sentencing) infractions are mentioned with violations, as in AS 12.25.180(b): "when a peace officer stops or contacts a person for the commission of an infraction or violation . . . ."

Senator Kevin Meyer

March 28, 2014

Page 4

**9. "Under AS 17.21.010 (b) (2) (G), beginning on page 2, line 19, is there wording that could be crafted to include current and future names of synthetic drugs, instead of listing each one of the currently known names?"**

As I expressed to you in an earlier memorandum, it is possible that the list of street names in AS 17.21.010(b)(2)(G) may become outdated. The other criteria listed in AS 17.21.010(b)(2) encompass the generic properties of the products the law is designed to prohibit. If the legislature would like to add to the statute, it must amend the law.

If I may be of further assistance, please advise.

KJS:lnd  
14-146.lnd

# LEGAL SERVICES

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STATE OF ALASKA

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State Capitol  
Juneau, Alaska 99801-1182  
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## MEMORANDUM

February 10, 2014

**SUBJECT:** Bill relating to illicit synthetic drugs  
(Work Order No. 28-LS1242\A)

**TO:** Senator Kevin Meyer  
Attn: Edra Morledge

**FROM:** Kathleen Strasbaugh  
Legislative Counsel

Please find enclosed a draft bill that would prohibit the sale of certain synthetic drugs. You asked for a bill based on an Anchorage ordinance (which in turn is based on a Bangor, Maine ordinance) that allows for the ticketing of establishments that sell products containing synthetic drugs labeled as other products, such as "bath salts" or "spice," designed to mimic certain stimulants and marijuana.

Drafting issues. Controlled substances are excluded from the definition of "illicit synthetic drugs" in this version of the bill. The street names of the products listed in the ordinances have been retained, although they are likely to rapidly become outdated, and do not indicate the substances they contain and I would recommend eliminating them. There could be some difficulty with penalizing substances without specifically identifying them, whether in the ordinance or in this draft. *See, e.g., Crutchfield v. State*, 627 P.2d 196, 200 - 201 (Alaska 1980) (conviction for driving while under the influence of a prescription drug overturned where drug was not listed in regulations that was simply referred to as "of composition substantially similar" to listed drugs); *State v. Erickson*, 574 P.2d 1, 20 - 21 (Alaska 1978) (court suggested that "of composition substantially similar" language could not be used to indict for possession or sale of a substance that was not listed); *Casey v. State*, 505 P.2d 285, 286 n. 2 (Alaska 1973) (court suggested that term "having physiologically similar effects" may be unconstitutionally vague). However, both the bill and the ordinance are designed to address the distribution of items essentially because of how they are marketed, rather than because of their specific chemical composition, and hopefully this will aid in avoiding the problem of vagueness.

Penalties and related matters. The draft bill provides the penalty you requested. As noted, the definition of "synthetic drug" and excludes controlled substances. This should avoid interference with the enforcement of criminal statutes that impose differing penalties for possession, possession with intent to distribute, distribution, and manufacture of controlled substances, depending on the relative threat that the substance poses to individual and public health. The ordinance that you provided contemplates that the products it prohibits may contain synthetic marijuana or stimulants. These substances are currently classified as schedule IIIA (AS11.71.160(f)) and IIA drugs

Senator Kevin Meyer  
February 10, 2014  
Page 2

(AS 11.71.150(e)(11) - (15)) respectively. Manufacture or delivery of either can, under some circumstances, qualify as misconduct involving a controlled substance in the third degree, a class B felony. AS 11.71.030. If a new statute classified distribution of these substances as a violation, the maximum penalty would be a fine. This significant difference in punishment for similar misconduct raises constitutional issues. A court will, as a matter of due process and equal protection, evaluate whether offenses and their accompanying sentences are proportional to each other, that is, whether greater punishment is imposed for less blameworthy conduct. In *Pruett v. State*, 742 P.2d 257, 263 (Alaska App. 1987) the Alaska Court of Appeals considered two statutes, one that imposed a five-year presumptive sentence for manslaughter (recklessly killing a victim) and one that imposed a seven-year sentence for first degree assault (recklessly injuring, but not killing a victim). The court found that the legislature could not have intended a five-year presumptive term for killing a victim but a seven-year presumptive sentence for injuring the victim, and determined that the lower presumptive sentence should apply to a defendant charged with assault. *See also Smith v. State*, 28 P.3d 323, 329 - 30 (Alaska App. 2001). If a person selling a synthetic product were charged with a violation for distributing a product because it contained, for example, cathinone (an ingredient of some bath salts), the person might well argue that the lesser offense applies. To avoid this problem, we have, as noted above, defined illicit synthetic drugs to *exclude* controlled substances.

Federal preemption. Given that the mislabeling of both prescription and nonprescription drugs is a matter comprehensively regulated by the federal Food and Drug Administration, the question arises of whether, under the Supremacy Clause of the United States Constitution, federal law preempts state regulation in this area. This might be an issue if the distributors of a product had complied with federal law regarding the labelling of drugs and the state sought to impose conflicting labelling requirements. *Mutual Pharmaceutical Co., Inc. v. Bartlett*, 570 U.S. \_\_\_, 133 S.Ct. 2466, 186 L.Ed. 2d 607 (2013) (drug company could not comply with state law without violating federal law regarding the required contents of the label; state law struck down). However, if the products in question do not comply with the federal drug labelling law, it may be that no conflict will arise.

Relationship to imitation drug laws. AS 11.73 prohibits the delivery of substances containing certain listed chemical compounds designed and marketed to lead a person to believe that the substance is a controlled substance or has the same effect as a controlled substance. All of the offenses in AS 11.73 are felonies. There is likely to be some overlap between AS 11.73 and the proposed statute with respect to the product involved. Hopefully maintaining the focus on labelling in the civil statute will avoid the due process and equal protection problems discussed above.

If I can be of further assistance, please advise.

KJS:lem  
14-023.lem

Enclosure

Submitted by: Chair of the Assembly at the  
Request of the Mayor  
Prepared by: Dept. of Law  
For reading: December 17, 2013

**ANCHORAGE, ALASKA**  
**AO No. 2013-156**

1 **AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE CHAPTER 8.35**  
2 **TO ADD A SECTION PROHIBITING ILLICIT SYNTHETIC DRUGS SUCH AS**  
3 **“SPICE”, “K2”, AND “BATH SALTS”; AND PROVIDING FOR A MINOR OFFENSE**  
4 **PENALTY.**  
5

---

6  
7 **WHEREAS**, herbal and/or chemical mixtures are being marketed and sold in the  
8 Municipality of Anchorage which are not necessarily controlled by federal or state law  
9 but which are designed and marketed to mimic the effects of controlled substances,  
10 as detailed in the Assembly Memorandum accompanying this ordinance;  
11

12 **WHEREAS**, the Anchorage Police Chief has advised that the Anchorage Police  
13 Department is concerned that the proliferation and availability of these substances  
14 presents a threat to public safety, and police officers’ attempts to address the  
15 provision and marketing of these products through application of current state and  
16 municipal laws is inefficient and usually ineffective, for the reasons described in the  
17 AM. The APD has verified the availability of a significant number of these products  
18 in the city. Along with the Municipal Prosecutor’s office, APD supports the adoption  
19 of an ordinance that would allow its officers to identify prohibited products through  
20 examination of the packaging and/or statements made at the point of sale or seizure;  
21 and  
22

23 **WHEREAS**, because illicit synthetic drugs are an immediate and ever-present threat  
24 to the public safety and to the health of young people in particular, and are causing  
25 psychological and physical affects to users, this ordinance is deemed to be an  
26 emergency measure and shall become effective immediately in order to protect the  
27 public health and safety; now, therefore,  
28

29 **THE ANCHORAGE ASSEMBLY ORDAINS:**  
30

31 **Section 1.** Anchorage Municipal Code chapter 8.35, Drug Abuse and  
32 Paraphernalia, is hereby amended by adding a new section to read as follows:  
33

34 **8.35.500 Illicit synthetic drugs.**  
35

36 A. *Purpose.* The purpose of this section is to regulate the availability of  
37 products which are enhanced with synthetic chemicals, which  
38 chemicals mimic the effects of controlled substances on users,  
39 because these products are a danger to the public health, safety and  
40 welfare.  
41

42 B. *Definitions.* For purposes of this section, the following terms, phrases,  
43 words and their derivatives shall have the meanings given herein,

1 unless the context clearly indicates or requires a different meaning:

2  
3 *BATH SALTS, SYNTHETIC CATHINONES, SYNTHETIC*  
4 *STIMULANTS, N-BOMB, 251-NBOMe* is any crystalline, liquid or powder  
5 product in crystalline, loose powder, block, tablet, tabs, paper, blotter paper or  
6 capsule form, or any stimulant-type product, when

7  
8 1. the label is in any way false or misleading, or which does not  
9 contain a label specifying:

- 10  
11 a. the identity of the commodity; and  
12 b. the name and place of business of the manufacturer,  
13 packer, or distributor.

14  
15 2. Street names for these products include, but are not limited to:  
16 Bliss, Blue Silk, Cloud Nine, Drone, Energy-1, Ivory Wave,  
17 Lunar Wave, Meow Meow, Ocean Burst, Pure Ivory, Ivory Soft,  
18 Purple Wave, Red Dove, Snow Leopard, Stardust, Vanilla Sky,  
19 White Dove, White Knight, White Lightning, White Rush, White  
20 China, Blizzard, Bonzai Grow, Charge Plus, Charlie, Euphoria,  
21 Hurricane, Lunar Wave, Ocean, Pixie Dust, Posh, Scarface,  
22 Lovely Dovey, Aura, MDPV, MDPK, MTV, Maddie, Hurricane  
23 Charlie, Black Rob, Super Coke, PV, Peeve, Meph, Drone,  
24 MCAT, Funky Green Stuff, Reggie's Blend, Hammer Head,  
25 Scooby Snax, XXX, Baby Halo, Zombie Matter, El Diablo,  
26 Supernova Halo, Dead Man, Smokin' Dragon, Rippler, Twilight  
27 Zone, Bloody Mary, Head Stash, Eight Ballz, Bloody Eyes, Mad  
28 Hatter, Grape Ape, Smiles, Mr. Happy, Crippler, Diablo, Dragon  
29 Blow, Lightning, Caution, Eclipse, Lunar Eclipse, Serenity,  
30 Serenity Now, Superman, Synergy, Arctic Synergy, Flight 300,  
31 Cotton Cloud, Kush, Kush Blitz, Amp, Space, Dynamite, Sippin  
32 Syrup and Dark Night.

33  
34 3. This definition shall include any product to which any synthetic  
35 chemical or synthetic chemical compound has been added  
36 which has no legitimate relation to the advertised use of the  
37 product, whether or not the label meets the requirements herein.

38  
39 *DRUG* is an article that is intended to affect the function of the body of  
40 humans.

41  
42 *ILLICIT SYNTHETIC DRUGS* are spice, synthetic cannabinoids,  
43 synthetic marijuana, bath salts, synthetic cathinones, n- bombs, 251-NBOMe,  
44 synthetic stimulants, and misbranded drugs, as defined herein.

45  
46 *MISBRANDED DRUG* is any drug for which:

- 47 1. the label is in any way false or misleading;  
48 2. the label does not bear the name and place of business of the  
49 manufacturer, repackager, or distributor of the finished form of  
50 the drug;

- 1 3. the label does not bear adequate directions for customary use;
- 2 or
- 3 4. the label does not bear adequate warnings against customary
- 4 use.

5  
6 *SPICE, SYNTHETIC CANNABINOIDS, SYNTHETIC MARIJUANA* is  
7 any aromatic plant material in granular, loose leaf or powder form, or in liquid  
8 or as a food additive, or any herbal-incense-type stimulant or hallucinogen  
9 product, when

- 10  
11 1. the label is in any way false or misleading, or which does not
- 12 contain a label specifying:
- 13
- 14 a. the identity of the commodity; and
- 15 b. the name and place of business of the manufacturer,
- 16 packer, or distributor.

- 17  
18 2. Street names for these products include, but are not limited to:
- 19 Bliss, Black Mamba, Bombay Blue, Fake Weed, Genie, Spice,
- 20 Zohai, K2, K3, Smoke, Pot-Pourri, Buzz, Spice 99, Voodoo,
- 21 Pulse, Hush, Mystery, Earthquake, Stinger, Ocean Blue,
- 22 Serenity, Chronic Spice, Spice Gold, Spice Silver, Skunk, Mr.
- 23 Nice Guy, Mr. Happy, K3 Legal, Sence, Smoke, Chill X, Earth
- 24 Impact, Galaxy Gold, Space Truckin, Solar Flare, Moon Rocks,
- 25 Aroma, Scope, Sky High, Atomic, G-20, Guerrilla Warfare,
- 26 Makes Scents, g-13, Tiger Shark, California Dreams, Dank,
- 27 Bullet, Mind Trip, Voodoo Child, Jazz, Nightlights, Matrix,
- 28 Hypnotiq, AK47, Maui Wowie, Cloud 9, Daylights, Joker, Dead
- 29 Man Walking, Brain Storm, Soul Sence, Kush, Kush Mania,
- 30 Dragons Fire, Lucid, Mad Hatter, Scooby Snax, D-ZL, OMG,
- 31 Demon, Barely In, Pineapple Express, Hayze, King Kong, Black
- 32 Out, Pure Evil, Blue Jay, Honeymoon, Cherry, El Diablo,
- 33 Scorpion King, Funky Monkey 20X, Funky Green Stuff, Reggie's
- 34 Blend, Hammer Head, XXX, Baby Halo, Zombie Matter, El
- 35 Diablo, Supernova Halo, Dead Man, Smokin' Dragon, Rippler,
- 36 Twilight Zone, Bloody Mary, Head Stash, Eight Ballz, Bloody
- 37 Eyes, Grape Ape, Crippler, Dr. Feel Good, Mr. Miyagi, Time
- 38 Out, Warpaint, K6, Black Diamond, Fuego, Green Monster,
- 39 Matrix, Voodoo, Mojo Extreme, Kush, Cloud 13, Storm, Good
- 40 Times, The Bomb, Voodoo Spice, Puff, Ninja, The Hampster,
- 41 Working Joe, Head Trip, Skyscraper, Froge.

- 42  
43 3. This definition shall include any plant material to which any
- 44 synthetic chemical or synthetic chemical compound has been
- 45 added which has no legitimate relation to the advertised use of
- 46 the product, whether or not the label meets the requirements
- 47 herein.

48  
49 *SYNTHETIC CHEMICAL* or *SYNTHETIC CHEMICAL COMPOUND* is  
50 any chemical or chemical compound whose molecular makeup is similar to

1 those substances listed as controlled substances in AS 11.71.160(f)(7)-(16),  
2 (including any isomers, esters, ethers, salts, and salts of isomers, esters, and  
3 ethers of such substances), or to those substances listed in or pursuant to 21  
4 U.S.C. 812(c), 21 U.S.C. 811(h), and 21 U.S.C. 802(32), or those substances  
5 listed temporarily subject to emergency scheduling in 21 C.F.R. § 1308.11(h),  
6 and whose intended use, when introduced into the human body, is to mimic or  
7 simulate the effects of a controlled substance.

8  
9 **C. *Prohibition of illicit synthetic drugs.***

- 10  
11 1. It is unlawful for any person to possess, use, provide, sell,  
12 produce, manufacture, or distribute, or to offer, display, market,  
13 or advertise for sale, any illicit synthetic drug.  
14  
15 2. In determining whether a product is prohibited by this section,  
16 statements on package labeling such as "not for human  
17 consumption" may be disregarded when other relevant factors  
18 (viewed alone or in totality) indicate that the product is intended  
19 to be consumed or ingested by humans or is a product  
20 regulated by this section. Other relevant factors that may be  
21 used to determine whether a product or sale is prohibited by this  
22 section include, but are not limited to: verbal or written  
23 representations at the point of sale or seizure regarding the  
24 purpose, methods, use, or effect of the product; aspects of the  
25 packaging or labeling suggesting that the user will achieve a  
26 "high," euphoria, relaxation, mood enhancement, or that the  
27 product has other effects on the body; the cost of the product is  
28 disproportionately higher than other products marketed for the  
29 same use; the product contains a warning label stating or  
30 suggesting that the product is in compliance with state or federal  
31 laws regulating controlled substances; the product's name or  
32 packaging uses images or slang referencing an illicit street drug;  
33 illicit or underground methods of sale or delivery are employed  
34 by the seller or provider; or the product resembles an illicit street  
35 drug such as cocaine, methamphetamine, LSD, or marijuana.  
36  
37 3. *Defense.* It shall be a defense to the prosecution of a violation of  
38 this section that a product is specifically excepted by, or  
39 regulated within and in compliance with, state or federal law. For  
40 the purposes of this section, it shall not be a defense that a  
41 product is not subject to regulation unless the product is  
42 specifically exempt from regulation; mere "nonregulation" by  
43 these acts without a specific regulatory exemption does not  
44 render a product exempt under this section.

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D. *Sale of certain products for human consumption prohibited.* It is unlawful for any person to provide, sell, or offer for sale a product for human consumption when the product is labeled "not for human consumption" or contains similar warnings.

E. *Violations and penalties; seizure.*

1. Each product, package, tube, vial or container possessed, used, provided, sold, produced, manufactured, distributed, or offered, displayed, marketed, or advertised for sale shall be a separate minor offense. The fine for each minor offense shall be \$500.

2. Any products found in violation of this section may be seized and held as evidence to be used in any future proceeding and may be disposed of as appropriate after their use for evidentiary purposes is no longer required, including in accordance with chapter 7.25.

**Section 2.** This ordinance shall be effective immediately upon passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 14th day of January, 2014.

\_\_\_\_\_  
Chair of the Assembly

ATTEST:

\_\_\_\_\_  
Municipal Clerk



# CITY OF BANGOR

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**ORDINANCE**, Establishing Chapter 274, Synthetic Drugs, of the Code of the City of Bangor

**WHEREAS**, new herbal and/or chemical mixtures are being marketed and sold in the City which are not necessarily controlled by federal or state law but which are designed and marketed to mimic the effects of controlled substances;

**WHEREAS**, according to the Drug Enforcement Administration (DEA), synthetic cannabinoids, also known as "Spice" or "K2," are mixtures of herbs and spices that are typically sprayed with a synthetic compound chemically similar to THC, the psychoactive ingredients in marijuana. These products are available for purchase in various retail outlets, tobacco shops, head shops, and over the internet. The products are often marketed as "incense" that can be smoked. The product sometimes resembles potpourri, but can also be found in liquid form to be smoked in electronic cigarettes, or as a food "additive." These products produce psychological effects similar to those of marijuana, which include, but are not limited to, paranoia, panic attacks, and giddiness. The short term physiological effects include increased heart rate and increased blood pressure, and the long term physiological effects are unknown. The DEA has placed a number of synthetic cannabinoids into Schedule I (the class of substances that carry a high potential for abuse and have no currently accepted medical use) of the Controlled Substances Act (CSA), 21 USC §§ 81 et seq., finding that placement into Schedule I was necessary to prevent an imminent hazard to the public safety;

**WHEREAS**, according to the DEA, synthetic cathinones, also known as "Bath Salts," are chemicals that are synthetic derivatives of cathinones, a central nervous system stimulant. These products are available for purchase in various retail outlets, tobacco shops, head shops, and over the internet. The products are sold in powder, tablet, and capsule form, and are usually ingested by sniffing/snorting but can also be taken orally, smoked, or put into a solution and injected. These products can produce agitation, insomnia, irritability, dizziness, depression, paranoia, delusions, suicidal thoughts, seizures, and panic attacks. Users have also reported effects such as impaired perception of reality, reduced motor control, and decreased ability to think clearly. Cathinone derivatives act as central nervous system stimulants causing rapid heart rate, which may lead to heart attacks and strokes, chest pains, nosebleeds, sweating, nausea and vomiting. Drugs that have similar effects include amphetamines, cocaine, Khat, LSD and MDMA. The DEA has placed a number of chemicals used to make bath salts into Schedule I of the CSA, finding that an order making possession or sale of these chemicals, or the products that contain them, was necessary to prevent an imminent hazard to the public safety;

**WHEREAS**, in response to the efforts by federal and state legislators to outlaw the chemicals in synthetic cannabinoids and synthetic cathinones, chemists have reconfigured the specific substances that were prohibited to produce "new" versions of these synthetic drugs. This was accomplished by altering the molecular architecture of the chemicals used in the products to produce a series of different compounds which are closely structurally related to the prohibited substances, but which are not listed in the state or federal controlled substance laws. In some cases, these manufacturers and/or distributors of these new products went so far as to claim on the packaging that the products contained no prohibited chemicals, or were in accordance with state and federal laws;

**WHEREAS**, manufacturers of these products are unknown to the consumer because the packaging does not reveal the name and location of the manufacturer or distributor, which is required by federal laws regulating the labeling of consumer commodities. Manufacturers and distributors have not obtained FDA approval of these products as a food product, drug, dietary supplement, or other approved substance. Consumers suffering a reaction to or injury from these products have little chance of obtaining information concerning the contents of the product because the identity and locations of the manufacturers are unknown;

**WHEREAS**, although often marked "not for human consumption," or being labeled as otherwise innocuous products (i.e., plant food, incense, potpourri, iPod cleaner, etc.), these products are in fact designed and marketed to the buyer as products that act upon and effect the human body and its systems as a legal method to get high or achieve the effects of illicit drugs;

**WHEREAS**, products containing synthetic stimulants are available and, by the design and appearance of the names and packaging of these substances, appear to be marketed to young adults and children. Increased usage among high school youths is a concern for both law enforcement and the medical community. The University of Michigan Institute for Social Research in "Monitoring the Future, National Results on Adolescent Drug Use, Overview of Key Findings 2011" found that 11.4% of high school seniors indicated use of synthetic marijuana; and

**WHEREAS**, the Police Chief has advised that the Police Department is concerned that the proliferation and availability of these substances presents a threat to public safety, and is attempting to address the provision and marketing of these products through application of current state laws. However, enforcement of current state regulations is not effective due to the chemical variation of the products, and the difficulty in quickly analyzing the specific chemical makeup of the products. It takes several months to obtain the results of tests to determine the specific chemical makeup of the products. The Police Department has verified the availability of a significant number of these products in the City, and supports the adoption of an ordinance that would allow its officers to identify prohibited products through examination of the packaging and/or statements made at the point of sale; and

**WHEREAS**, the City Council finds that illicit synthetic drugs are distributed, labeled, and marketed in a way that poses dangerous consequences to the consumer; and

**WHEREAS**, the City Council deems it to be in the best interests of the citizens and residents to prohibit the possession, sale, and distribution of illicit synthetic drugs and misbranded drugs.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BANGOR AS FOLLOWS, THAT

Chapter 274 of the Code of the City of Bangor be created as follows:

#### **Chapter 274. SYNTHETIC DRUGS**

##### **§ 274-1. Purpose.**

The purpose of this chapter is to regulate the availability of products which are enhanced with synthetic chemicals, which chemicals mimic the effects of controlled substances on users, because these products are a danger to the public health, safety and welfare.

##### **§ 274-2. Definitions.**

For purposes of interpreting this chapter, the following terms, phrases, words and their derivatives shall have the meanings given herein unless the context clearly indicates or requires a different meaning:

**SPICE, SYNTHETIC CANNABINOIDS, SYNTHETIC MARIJUANA**

Any aromatic plant material in granular, loose leaf or powder form, or in liquid or as a food additive, or any herbal-incense-type stimulant or hallucinogen product, when the label is in any way false or misleading, or which does not contain a label specifying (1) the identity of the commodity and (2) the name and place of business of the manufacturer, packer, or distributor. Street names for these products include, but are not limited to: Bliss, Black Mamba, Bombay Blue, Fake Weed, Genie, Spice, Zohai, K2, K3, Smoke, Pot-Pourri, Buzz, Spice 99, Voodoo, Pulse, Hush, Mystery, Earthquake, Stinger, Ocean Blue, Serenity, Chronic Spice, Spice Gold, Spice Silver, Skunk, Mr. Nice Guy, Mr. Happy, K3 Legal, Sence, Smoke, Chill X, Earth Impact, Galaxy Gold, Space Truckin, Solar Flare, Moon Rocks, Aroma, Scope, Sky High, Atomic, G-20, Guerrilla Warfare, Makes Scents, g-13, Tiger Shark, California Dreams, Dank, Bullet, Mind Trip, Voodoo Child, Jazz, Nightlights, Matrix, Hypnotiq, AK47, Maui Wowie, Cloud 9, Daylights, Joker, Dead Man Walking, Brain Storm, Soul Sence, Kush, Kush Mania, Dragons Fire, Lucid, Mad Hatter, Scooby Snax, D-ZL, OMG, Demon, Barely In, Pineapple Express, Hayze. This definition shall include any plant material to which any Synthetic Chemical or Synthetic Chemical Compound has been added which has no legitimate relation to the advertised use of the product whether or not the label meets the requirements herein.

**BATH SALTS, SYNTHETIC CATHINONES, SYNTHETIC STIMULANTS**

Any crystalline or powder product in crystalline, loose-powder, block, tablet, or capsule form, or any stimulant-type product, when the label is in any way false or misleading, or which does not contain a label specifying (1) the identity of the commodity, and (2) the name and place of business of the manufacturer, packer, or distributor. Street names for these products include, but are not limited to: Bliss, Blue Silk, Cloud Nine, Drone, Energy-1, Ivory Wave, Lunar Wave, Meow Meow, Ocean Burst, Pure Ivory, Purple Wave, Red Dove, Snow Leopard, Stardust, Vanilla Sky, White Dove, White Knight, White Lightning, Blizzard, Bonzai Grow, Charge Plus, Charlie, Euphoria, Hurricane, Lunar Wave, Ocean, Pixie Dust, Posh, Scarface, Lovely Dovey, Aura, MDPV, MDPK, MTV, Maddie, Hurricane Charlie, Black Rob, Super Coke, PV, Peeve, Meph, Drone, MCAT. This definition shall include any product to which any Synthetic Chemical or Synthetic Chemical Compound has been added which has no legitimate relation to the advertised use of the product whether or not the label meets the requirements herein.

**DRUG**

An article that is intended to affect the function of the body of humans.

**MISBRANDED DRUG**

Any drug for which (1) the label is in any way false or misleading; (2) the label does not bear the name and place of business of the manufacturer, repackager, or distributor of the finished form of the drug; (3) the label does not bear adequate directions for use; or (4) the label does not bear adequate warnings against use.

**ILLICIT SYNTHETIC DRUGS**

Spice, synthetic cannabinoids, synthetic marijuana, bath salts, synthetic cathinones, synthetic stimulants, and misbranded drugs as defined herein.

**SYNTHETIC CHEMICAL OR SYNTHETIC CHEMICAL COMPOUND**

Any chemical or chemical compound whose molecular make up is similar to those substances listed as controlled substances in 17-A M.R.S. § 1101(16-A) (including any isomers, esters, ethers, salts, and salts of isomers, esters, and ethers of such substances) and whose intended use when introduced into the human body is to mimic or simulate the effects of a controlled substance.

**§ 274-3. Prohibition of Illicit Synthetic Drugs.**

- A. It is unlawful for any person to possess, use, provide, sell, produce, manufacture, or distribute, or to offer, display, market, or advertise for sale, any illicit synthetic drug.
- B. In determining whether a product is prohibited by this chapter, statements on package labeling such as "not for human consumption" may be disregarded when other relevant factors (viewed alone or in totality) indicate that the product is intended to be consumed or ingested by humans, or is a product regulated by this chapter. Other relevant factors that may be used to determine whether a product or sale is prohibited by this chapter include, but are not limited to: verbal or written representations at the point of sale regarding the purpose, methods, use, or effect of the product; aspects of the packaging or labeling suggesting that the user will achieve a "high," euphoria, relaxation, mood enhancement, or that the product has other effects on the body; the cost of the product is disproportionately higher than other products marketed for the same use; the product contains a warning label stating or suggesting that the product is in compliance with state laws regulating controlled substances; the product's name or packaging uses images or slang referencing an illicit street drug; illicit or underground methods of sale or delivery are employed by the seller or provider; the product resembles an illicit street drug such as cocaine, methamphetamine, or marijuana.
- C. Defense. It shall be a defense to the prosecution of a violation of this chapter that a product is specifically excepted by, or regulated within and in compliance with, state or federal law. For the purposes of this section, it shall not be a defense that a product is not subject to regulation unless the product is specifically exempt from regulation; mere "non-regulation" by these acts without a specific regulatory exemption does not render a product exempt under this section.

**§ 274-4. Sale of Certain Products for Human Consumption Prohibited.**

It is unlawful for any person to provide, sell, or offer for sale a product for human consumption when the product is labeled "not for human consumption" or contains similar warnings.

**§ 274-5. Violation and Seizure.**

- A. Each package shall be a separate violation. The fine for each violation shall be \$500.
- B. Any products found in violation of this section may be seized and held as evidence to be used in any future proceeding and may be disposed of as appropriate after their use for evidentiary purposes is no longer required.

1 Code Ordinance

By: Mayor, Police Chief, and  
Council Members Harris, O'Barr and Sullivan-Leonard

Introduced:  
Public Hearing:  
Action:  
Vote:

8 **City Of Wasilla**  
9 **Ordinance Serial No. 14-17**

10  
11 **An ordinance of the Wasilla City Council adopting Wasilla Municipal Code, Chapter 9.28**  
12 **Illicit Synthetic Drugs, prohibiting drugs such as "Spice" and "Bath Salts" and providing**  
13 **for a minor offense penalty.**

---

14  
15 **WHEREAS**, chemical mixtures are being marketed and sold in the City of Wasilla  
16 which are not necessarily controlled by federal or state law but which are designed and marketed  
17 to mimic the effects of controlled substances, as detailed in this ordinance; and

18  
19 **WHEREAS**, the Mat-Su Health Foundation's 2013 Mat-Su Community Health Needs  
20 Assessment identified alcohol and substance abuse as a top health issue in the valley and found  
21 synthetic drugs are being marketed and sold and pose an immediate threat to the public safety  
22 due to its addictive nature; and

23  
24 **WHEREAS**, Wasilla Police Chief has also advised that the Wasilla Police Department is  
25 concerned that the proliferation and availability of these substances presents a threat to public  
26 safety, and police officers' attempts to address the provision and marketing of these products  
27 through application of current state and municipal laws is inefficient and usually ineffective. The  
28 Wasilla Police Department has verified the availability of a significant number of these products  
29 in the City. Wasilla Police Department supports the adoption of an ordinance that would allow its  
30 officers to identify prohibited products through examination of the packaging and/or statements  
31 made at the point of sale or seizure; and

32  
33 **WHEREAS**, because the illicit synthetic drugs are an immediate and ever-present threat  
34 to the public safety and to the health of young people in particular, and are causing psychological  
35 and physical affects to users; and

36  
37 **WHEREAS**, the street names for these products include, but are not limited to: N-  
38 BOMB, 251-NBOMe, Bliss, Blue Silk, Cloud Nine, Drone, Energy-1, Ivory Wave, Lunar Wave,  
39 Meow Meow, Ocean Burst, Pure Ivory, Ivory Soft, Purple Wave, Red Dove, White Knight,  
40 White Lightning, White Rush, White China, Blizzard, Bonzai Grow, Charge Plus, Charlie,  
41 Euphoria, Hurricane, Lunar Wave, Ocean, Pixie Dust, Posh, Scarface, Lovely Dovey, Aura,  
42 MDPV, MDPK, MTV, Maddie, Hurricane Charlie, Black Rob, Super Coke, PV, Peeve, Meph,  
43 MCAT, Funky Green Stuff, Reggie's Blend, Hammer Head, Scooby Snax, XXX, Baby Halo,  
44 Zombie Matter, El Diablo, Supernova Halo, Dead Man, Smokin' Dragon, Rippler, Twilight  
45 Zone, Bloody Mary, Head Stash, Eight Ballz, Bloody Eyes, Mad Hatter, Grape Ape, Smiles, Mr.  
46 Happy, Crippler, Diablo, Dragon Blow, Lightning, Caution, Eclipse, Lunar Eclipse, Serenity,  
47 Serenity Now, Superman, Synergy, Arctic Synergy, Flight 300, Cotton Cloud, Kush, Kush Blitz,

1 Amp, Space, Dynamite, Sippin Syrup and Dark Night, Bliss, Black Mamba, Bombay Blue, Fake  
2 Weed, Genie, Spice, Zohai, K2, K3, Smoke, Pot-Pourri, Buzz, Spice 99, Voodoo, Pulse, Hush,  
3 Mystery, Earthquake, Stinger, Ocean Blue, Serenity, Chronic Spice, Spice Gold, Spice Silver,  
4 Skunk, Mr. Nice Guy, Mr. Happy, K3 Legapl, Sense, Smoke, Chill X, Earth Impact, Galaxy  
5 Gold, Space Truckin, Solar Flare, Moon Rocks, Aroma, Scope, Sky High, Atomic, G-20,  
6 Guerrilla Warfare, Makes Scents, g-13, Tiger Shark, California Dreams, Dank, Bullet, Mind  
7 Trip, Voodoo Child, Jazz, Nightlights, Matrix, Hypnotiq, AK47, Maui Wowie, Cloud 9,  
8 Daylights, Joker, Dead Man Walking, Brain Storm, Soul Sence, Kush, Kush Mania, Dragons  
9 Fire, Lucid, Mad Hatter, Scooby Snax, D-ZL, OMG, Demon, Barely In, Pineapple Express,  
10 Hayze, King Kong, Black Out, Pure Evil, Blue Jay, Honeymoon, Cherry, El Diablo, Scorpion  
11 King, Funky Monkey 20X, Funky Green Stuff, Reggie's Blend, Hammer Head, XXX, Baby  
12 Halo, Zombie Matter, Supernova, Halo, Dead Man, Smokin' Dragon, Rippler, Twilight Zone,  
13 Bloody Mary, Head Stash, Eight Ballz, Bloody Eyes, Grape Ape, Crippler, Dr. Feel Good, Mr.  
14 Miyagi, Time Out, Warpaint, K6, Black Diamond, Fuego, Green Monster, Matrix, Voodoo,  
15 Mojo Extreme, Cloud 13, Storm, Good Times, The Bomb, Voodoo Spice, Puff, Ninja, The  
16 Hampster, Working Joe, Head Trip, Skyscraper, and Froge.

17  
18 **Section 1. Classification.** This ordinance is of a general and permanent nature and shall  
19 become part of the city code.

20  
21 **Section 2. Adoption of chapter.** WMC 09.28, Illicit Synthetic Drugs, is hereby adopted  
22 to read as follows:

## 23 24 **CHAPTER 9.28 ILLICIT SYNTHETIC DRUGS**

### 25 26 **9.28.010 Definitions.**

27  
28 When used in this chapter, the following words and phrases shall have the  
29 meanings set forth in this section:

30  
31 **ILLICIT SYNTHETIC DRUGS.** Includes spice, synthetic cannabinoids, synthetic  
32 marijuana, synthetic chemical, bath salts, synthetic cathinones, synthetic  
33 stimulants, and misbranded drugs as defined with more specificity below:

34  
35 (1) *Spice, Synthetic Cannabinoids, Synthetic Marijuana.* Any  
36 aromatic plant material in granular, loose leaf or powder form, or in liquid  
37 or as a food additive, or any herbal-incense-type stimulant or hallucinogen  
38 product and any plant material to which any synthetic chemical or  
39 synthetic chemical compound has been added which has no legitimate  
40 relation to the advertised use of the product except to enhance or create a  
41 "high," euphoria, relaxation, mood enhancement.

42  
43 (2) *Synthetic Chemical.* Any chemical or chemical compound  
44 whose molecular makeup is similar to those substances listed as controlled  
45 substances in AS 11.71.160(f)(7)-(16), (including any isomers, esters,  
46 ethers, salts, and salts of isomers, esters, and ethers of such substances), or  
47 to those substances listed in or pursuant to 21 U.S.C. 812(c), 21 U.S.C.  
48 811(h), and 21 U.S.C. 802(32), or those substances listed temporarily

1 subject to emergency scheduling in 21 C.F.R. § 1308.11(h), and whose  
2 intended use, when introduced into the human body, is to mimic or  
3 simulate the effects of a controlled substance.  
4

5 (3) *Bath Salts, Synthetic Cathinones, Synthetic Stimulants.* Any  
6 crystalline, liquid or powder product in crystalline, loose powder, block,  
7 tablet, tabs, paper, blotter paper or capsule form, or any stimulant-type.  
8

9 (4) *Misbranded Drug.* Any drug for which label is in any way  
10 false or misleading:  
11

12 (a) The label does not bear the name and place of business of  
13 the manufacturer and repackager, or distributor of the finished  
14 form of the drug;  
15

16 (b) The label does not bear adequate directions for customary  
17 use; or  
18

19 (c) The label does not bear adequate warnings against  
20 customary use.  
21

22 Illicit Synthetic Drugs as defined in this chapter are not controlled substances as  
23 defined in Alaska Statute Title 11.  
24

25 **9.28.020 Purpose.**  
26

27 The purpose of this chapter is to regulate the availability of products  
28 which are enhanced with synthetic chemicals, which chemicals mimic the effects  
29 of controlled substances on users, because these products are a danger to the  
30 public health, safety and welfare.  
31

32 **9.28.030 Prohibition of illicit synthetic drugs.**  
33

34 (A) It is unlawful for any person to possess, use, provide, sell, produce,  
35 manufacture, or distribute, or to offer, display, market, or advertise for sale, any  
36 illicit synthetic drug.  
37

38 (B) In determining whether a product is prohibited by this chapter,  
39 statements on package labeling such as “not for human consumption” may be  
40 disregarded when other relevant factors, viewed alone or in totality, indicate that  
41 the product is intended to be consumed or ingested by humans or is a product  
42 regulated by this chapter.  
43

44 (C) Some of the other relevant factors that may be used to determine  
45 whether a product or sale is prohibited by this chapter include, but are not limited  
46 to:  
47

48 (1) Verbal or written representations at the point of sale or  
seizure regarding the purpose, methods, use, or effect of the product;

1  
2 (2) Aspects of the packaging or labeling suggesting that the  
3 user will achieve a "high," euphoria, relaxation, mood enhancement, or  
4 that the product has other effects on the body once ingested or consumed;  
5

6 (3) The cost of the product is disproportionately higher than  
7 other products marketed for the same use;  
8

9 (4) The product contains a warning label stating or suggesting  
10 that the product is in compliance with state or federal laws regulating  
11 controlled substances;  
12

13 (5) The product's name or packaging uses images or slang  
14 referencing an illicit street drug or compares the effects of the product to  
15 any illicit street drug;  
16

17 (6) Illicit or underground methods of sale or delivery are  
18 employed by the seller or provider; or  
19

20 (7) The product resembles an illicit street drug such as cocaine,  
21 methamphetamine, LSD, or marijuana.  
22

23 **9.28.040 Sale of certain products for human consumption prohibited.**  
24

25 It is unlawful for any person to provide, sell, or offer for sale a product for  
26 human consumption when the product is labeled "not for human consumption" or  
27 contains similar warnings.  
28

29 **9.28.050 Defense.**  
30

31 It shall be a defense to the prosecution of a violation of this chapter that a  
32 product is specifically accepted by, or regulated within and in compliance with,  
33 state or federal law. For the purposes of this chapter, it shall not be a defense that  
34 a product is not subject to regulation unless the product is specifically exempt  
35 from regulation; mere "non-regulation" by these acts without a specific regulatory  
36 exemption does not render a product exempt under this chapter.  
37

38 **9.28.060 Violations, penalties and seizure.**  
39

40 A) Remedies and penalties for violations of this chapter are as  
41 provided in Chapter 1.20  
42

43 B) Each product, package, tube, vial or container possessed, used,  
44 provided, sold, produced, manufacturer, distributed, or offered, displayed,  
45 marketed, or advertised for sale shall be a separate minor offense.  
46

47 C) Any products found in violation of this chapter may be seized and  
48 held as evidence to be used in any future proceeding and may be disposed of as

1 appropriate after their use for evidentiary purposes is no longer required,  
2 including in accordance with Chapter 5.40.

3  
4 **Section 3. Amendment of subsection.** WMC 1.20.030(C) Disposition of scheduled  
5 offenses – Fine schedule, in the General Penalty section, is hereby amended to add the following  
6 fine to the schedule, as follows:  
7

CODE SECTION	DESCRIPTION OF OFFENSE	FINE
<u>WMC 9.28.030</u>	<u>Prohibition of illicit synthetic drugs</u>	<u>\$500</u>
<u>WMC 9.28.040</u>	<u>Sale of certain products for human consumption prohibited</u>	<u>\$500</u>

8  
9 **Section 4. Effective date.** This ordinance shall take effect on April 21, 2014.

10  
11 ADOPTED by the Wasilla City Council on -, 2014.

12  
13  
14  
15 \_\_\_\_\_  
16 VERNE E. RUPRIGHT, Mayor

17 ATTEST:

18  
19  
20 \_\_\_\_\_  
21 KRISTIE SMITHERS, MMC, City Clerk

[SEAL]

**CITY COUNCIL LEGISLATION STAFF REPORT**

**Ordinance Serial No. 14-17: Adopting Wasilla Municipal Code, Chapter 9.28 Illicit Synthetic Drugs, prohibiting drugs such as “Spice” and “Bath Salts” and providing for a minor offense penalty.**

Ordinance Sponsors: Council Member Leone Harris *Leone Harris*  
 Council Member Gretchen O’Barr *Gretchen O’Barr*  
 Council Member Colleen Sullivan-Leonard *Colleen Sullivan-Leonard*  
 Mayor Verne Rupright *Verne Rupright*  
 Police Chief Gene Belden

Date: March 3, 2014

Agenda of: March 24, 2014

Route to:	Department Head	Signature	Date
X	Chief of Police	<i>Gene Belden</i>	3-5-14
X	Finance Director	<i>John Stankovic</i>	3-3-14
X	Deputy Administrator	<i>[Signature]</i>	3/3/14
X	City Attorney	<i>Verne Rupright</i>	3/5/14
X	City Clerk	<i>Tomita</i>	3/6/14

Reviewed by Mayor Verne E. Rupright: *[Signature]*

Fiscal Impact:  yes or  no      Funds Available:  yes or  no

Attachments: Ordinance Serial No. 14-17 (5 pages)

**Summary Statement:**

Due to the public outcry and the impact illicit synthetic drugs have on our community, the proposed ordinance is requested to be adopted by the Wasilla City Council.

Illicit synthetic drugs are designed to mimic the effects of controlled substances. The proliferation and availability of these substances presents a threat to public safety, and police officers’ attempts to address the provision and marketing of these products through the application of current state and municipal laws is inefficient and usually ineffective.

**Staff Recommendation:** Introduce and set for public hearing Ordinance Serial No. 14-17.

# MUNICIPALITY OF ANCHORAGE



Office of the Mayor

Phone: 907-343-7100

FAX: 907-343-7180

Mayor Dan Sullivan

March 7, 2014

The Honorable John Coghill  
Capitol Building, Room  
Juneau, Alaska 99501

Dear Senator Coghill,

I would like to start by extending my appreciation for your committee's consideration of SB 173, *An Act relating to prohibition on the offer, display, marketing, advertising for sale of illicit synthetic drugs*. The Municipality of Anchorage supports Senator Meyer's efforts in designating "spice" as an illegal synthetic drug and outlawing its possession, marketing and sale in Alaska.

Synthetic substances sold openly in retail establishments has been a problem for Anchorage in the past. Our community was paying a steep price in ambulance runs, hospital bills, serious injuries and death from citizens ingesting these substances. Manufacturers were staying ahead of controlled substance laws by changing the chemical makeup of the drug; this left our police department with no tools for enforcement.

In response to this ongoing problem, the Anchorage Assembly passed an ordinance (AMC 8.35.500) that provides our local law enforcement the ability to issue financial penalties for the sale, possession and distribution of these substances, per packet. This penalty can be issued to both sellers and users. The passage of this ordinance has resulted in the products disappearing from the store shelves in Anchorage. On January 31, officers visited more than twenty of the twenty-three retailers who formerly sold the drugs and could not find a single packet in any store.

In other communities across the state, synthetic drug manufacturers are continuing to target young people who assume that because the substances are professionally packaged and can be bought in a store, that they must be safe. Members of the public testified before the Anchorage Assembly that these drugs are dangerous and unreliable, producing an unprecedented level of violence and mayhem in users and abusers.

SB 173 provides a new approach for State law enforcement by enabling rural communities like Little Diomed, who have been plagued with spice-related problems, to have a tool to address the open use of these dangerous substances. The Municipality of

Anchorage is hopeful that other communities in Alaska are able to join together in renouncing these unregulated substances that cause so much harm and have no legitimate use. SB 173 will enable communities across the state to call these substances what they really are: drugs that harm our youth and communities.

Again, I appreciate your committee and their consideration of this important piece of legislation. I urge your support and hope to see an end to the sale and use of these dangerous synthetic drugs.

Sincerely,

A handwritten signature in cursive script that reads "Dan Sullivan".

Dan Sullivan  
Mayor

**Mat-Su Health Foundation Resolution  
Advocating for Limiting the Availability of  
Synthetic Drugs in the Mat-Su Borough**

**WHEREAS** the Mat-Su Health Foundation's mission is to enhance the health of Alaskans living in Mat-Su, and where health is adversely affected by the use of illicit substances;

**WHEREAS** the 2013 Mat-Su Community Health Needs Assessment identified alcohol and substance abuse as a top health issue in Mat-Su based on valid and reliable data; and the Mat-Su community in 23 community meetings ranked alcohol and substance abuse as the number one health issue in Mat-Su;

**WHEREAS** herbal and/or chemical mixtures (synthetic drugs) are being marketed and sold in Mat-Su that are designed to mimic the effects of illicit substances, but are not necessarily controlled by federal or state law;

**WHEREAS** synthetic drugs pose an immediate threat to the public safety and to the health of young people in particular, and are causing unpredictable psychological and physical affects to users<sup>1,2</sup>;

**WHEREAS** there is evidence that the use of synthetic drugs by Mat-Su residents imposes a burden on the MSRMC emergency department<sup>3</sup>;

**WHEREAS** there is compelling evidence to support the assertion that limiting access to synthetic drugs is an effective way to decrease use and thereby the negative impact on individuals and communities<sup>4,5</sup>;

**WHEREAS** THRIVE Mat-Su, Mat-Su's Substance Abuse Prevention Coalition, has voted to support public policy and laws to limit access to these synthetic drugs; and the Mat-Su Health Foundation is a member of THRIVE;

**WHEREAS** it is difficult for law enforcement to effectively and efficiently address the provision and marketing of these products through the application of current state and municipal laws;

**BE IT THEREFORE RESOLVED** that the Mat-Su Health Foundation supports local and state level policies, laws, and initiatives that will further limit access to synthetic drugs.

*Approved by the Mat-Su Health Foundation Board of Directors on February 17, 2014*



Linda Conover, Chair

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<sup>1</sup> National Institute on Drug Abuse, U.S. Department of Health and Human Services, & National Institutes of Health. (2012). Drug Facts: Spice (Synthetic Marijuana). [www.drugabuse.gov](http://www.drugabuse.gov).

<sup>2</sup> National Institute on Drug Abuse, U.S. Department of Health and Human Services, & National Institutes of Health. (2012). Drug Facts: Synthetic Cathinones ("Bath salts"). [www.drugabuse.gov](http://www.drugabuse.gov).

<sup>3</sup> Synthetic Drugs (a.k.a. K2, Spice, Bath Salts, etc.). The White House. Retrieved February 10, 2014, from <http://www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts>.

<sup>4</sup> Bryan, S. (2013, August 5). Florida Synthetic Drug Ban Mostly Successful, Experts Say. *Sun Sentinel*. Fort Lauderdale, FL.

<sup>5</sup> Nevel, J. (2013, June 6). State ban curbs synthetic drug use. *The State Journal-Register*. Springfield, IL.

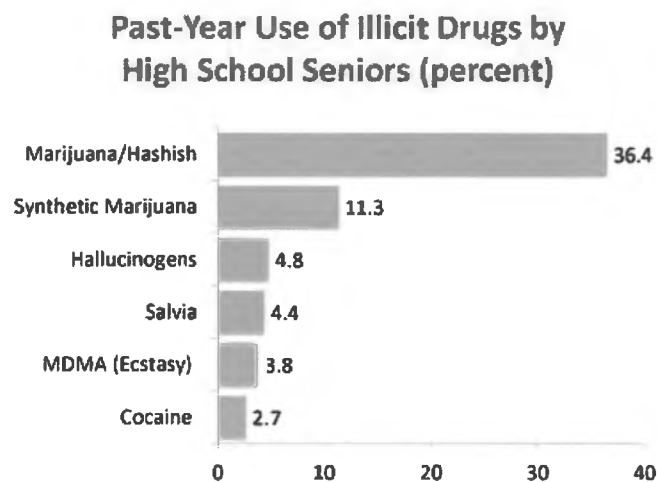


## Synthetic Drugs (a.k.a. K2, Spice, Bath Salts, etc.)

### Overview and History

- Synthetic cannabinoids, commonly known as “synthetic marijuana,” “K2,” or “Spice”, are often sold in legal retail outlets as “herbal incense” or “potpourri”, and synthetic cathinones are often sold as “bath salts” or “jewelry cleaner”. They are labeled “not for human consumption” to mask their intended purpose and avoid Food and Drug Administration (FDA) regulatory oversight of the manufacturing process.
- Synthetic cannabinoids are man-made chemicals that are applied (often sprayed) onto plant material and marketed as a “legal” high. Users claim that synthetic cannabinoids mimic  $\Delta^9$ -tetrahydrocannabinol (THC), the primary psychoactive active ingredient in marijuana.
- Use of synthetic cannabinoids is alarmingly high, especially among young people. According to the 2012 Monitoring the Future survey of youth drug-use trends, one in nine 12th graders in America reported using synthetic cannabinoids in the past year. This rate, unchanged from 2011, puts synthetic cannabinoids as the second most frequently used illegal drug among high school seniors after marijuana (see chart).
- Synthetic cathinones are man-made chemicals related to amphetamines. Synthetic cathinone products often consist of methylenedioxypyrovalerone (MDPV), mephedrone, and methylone.
- The Administration has been working with Federal, Congressional, state, local, and non-governmental partners to put policies and legislation in place to combat this threat, and to educate people about the tremendous health risk posed by these substances.

Figure 1: Use of Illicit Drugs among Twelfth Graders, 2012 Monitoring the Future Study



Source: University of Michigan, 2012 Monitoring the Future Study

### A Rapidly Emerging Threat

- Synthetic cannabinoids laced on plant material were first reported in the U.S. in December 2008, when a shipment of "Spice" was seized and analyzed by U.S. Customs and Border Protection (CBP) in Dayton, Ohio.
- There is an increasingly expanding array of synthetic drugs available. 51 new synthetic cannabinoids were identified in 2012, compared to just two in 2009. Furthermore, 31 new synthetic cathinones were identified in 2012, compared to only four in 2009. In addition, 76 other synthetic compounds were identified in 2012, bringing the total number of new synthetic substances identified in 2012 to 158.

### Risk to the Public Health

- The contents and effects of synthetic cannabinoids and cathinones are unpredictable due to a constantly changing variety of chemicals used in manufacturing processes devoid of quality controls and government regulatory oversight.
- Health warnings have been issued by numerous public health authorities and poison control centers describing the adverse health effects associated with the use of synthetic drugs.
- The effects of synthetic cannabinoids include severe agitation and anxiety, nausea, vomiting, tachycardia (fast, racing heartbeat), elevated blood pressure, tremors and seizures, hallucinations, dilated pupils, and suicidal and other harmful thoughts and/or actions.
- Similar to the adverse effects of cocaine, LSD, and methamphetamine, synthetic cathinone use is associated with increased heart rate and blood pressure, chest pain, extreme paranoia, hallucinations, delusions, and violent behavior, which causes users to harm themselves or others.

### Sources and Continuing Availability

- According to CBP, many synthetic cannabinoid and cathinone products originate overseas. Law enforcement personnel have also encountered the manufacture of synthetic drugs in the U.S., including in residential neighborhoods.
- Synthetic drugs are often sold at small retail outlets and are readily available via the Internet. The chemical compositions of synthetic drugs are frequently altered in an attempt to avoid government bans.

### Government Efforts to Ban Synthetic Drug Products

- Congress has taken steps to ban many of these substances at the Federal level, and the Administration has supported such efforts.
- The Synthetic Drug Abuse Prevention Act is part of the FDA Safety and Innovation Act of 2012, signed into law by President Obama. The law permanently places 26 types of synthetic cannabinoids and cathinones into Schedule I of the Controlled Substances Act (CSA). It also doubled the maximum period of time that the Drug Enforcement Administration (DEA) can administratively schedule substances under its emergency scheduling authority, from 18 to 36 months.
- The Controlled Substance Analogue Enforcement Act of 1986 allows many synthetic drugs to be treated as controlled substances if they are proven to be chemically and/or pharmacologically similar to a Schedule I or Schedule II controlled substance.

- In 2011, DEA exercised its emergency scheduling authority to control five types of synthetic cannabinoids, and three of the synthetic substances used to manufacture synthetic cathinones. In 2012, all but one of these substances were permanently designated as Schedule I substances under the Synthetic Drug Abuse Prevention Act, and the remaining substance was permanently placed into Schedule I by DEA regulation.
- On April 12, 2013, DEA used its emergency scheduling authority to schedule three more types of synthetic cannabinoids, temporarily designating them as Schedule I substances.
- At least 43 states have taken action to control one or more synthetic cannabinoids. Prior to 2010, synthetic cannabinoids were not controlled by any State or at the Federal level. In addition, at least 44 states have taken action to control one or more synthetic cathinones.

### ***Resources***

- Drug Enforcement Administration: <http://www.justice.gov/dea/divisions/hq/2013/hq062613.shtml>
- National Institute on Drug Abuse: <http://www.drugabuse.gov/infofacts/Spice.html>
- American Association of Poison Control Centers: <http://www.aapcc.org/dnn/default.aspx>
- Congressional Research Service: <http://www.fas.org/sgp/crs/misc/R42066.pdf>
- National Conference of State Legislators: <http://www.ncsl.org/issues-research/justice/synthetic-drug-threats.aspx>

Source: <http://www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts>

## SYNTHETIC DRUG THREATS



Updated November 28, 2012

State legislatures are outlawing two classes of synthetic drugs: synthetic cannabinoids (a.k.a. "Spice" or "K2") and substituted cathinones (a.k.a. "bath salts"). At least 45 states and Puerto Rico have already banned one or both of these substances. Legislation in 2009 and 2010 targeted specific versions of the drugs. However, minor changes to the chemical make-up of these substances can create new but very similar drugs not covered in the law. In response, 2011 and 2012 legislation targets entire classes of

substances and aims to prevent new formulations of synthetic drugs from remaining unregulated, while still allowing the substances for approved medical and research purposes.

### Synthetic Cannabinoids (a.k.a. "Spice" or "K2")

At least 41 states and Puerto Rico have legislatively banned synthetic cannabinoids. More information on state synthetic cannabinoid laws are available on our Synthetic Cannabinoid Enactments and Pending Synthetic Cannabinoid Legislation pages.

Synthetic cannabinoids are chemically engineered substances similar to tetrahydrocannabinol ("THC"), the active ingredient in marijuana. When smoked or ingested, synthetic cannabinoids can produce a high similar to marijuana. Initially developed for pain management research and the effects of cannabis on the brain, these substances have recently become a popular alternative to marijuana. The substances are sprayed on dried herbs and marketed and sold in local convenience stores or on the Internet under names like "Spice," "K2" or "Genie."

Synthetic cannabinoids can be classified into eight general groups, based on the type of chemical alteration made to the original substance: tetrahydrocannabinols; naphthoylindoles; naphthylmethylindoles; naphthoylpyrroles; naphthylideneindenes or naphthylmethylindenes; Phenylacetylindoles; cyclohexylphenols; and benzoylindoles. For more information on synthetic cannabinoid classes and the substances included in each, see Synthetic Cannabinoid Classes.

### Substituted Cathinones (a.k.a. "Bath Salts")

At least 43 states and Puerto Rico have outlawed substituted cathinones. More information on state substituted cathinone laws are available on our Substituted Cathinone Enactments and Pending Substituted Cathinone Legislation pages.

Substituted cathinones, commonly known by their street name, "bath salts," are derivatives of cathinone, a psychoactive substance with stimulant properties occurring naturally in the *khat* plant. The effects of substituted cathinones are similar to amphetamines like ecstasy and cocaine.

The four most widely recognized substituted cathinones are mephedrone, MDVP, methylone and methedrone. While these substances are typically referred to individually, they can be classified more generally as compounds structurally derived from cathinones and modified in one of a few different

ways. For more information on substituted cathinone classification and related substances, see Substituted Cathinone Classes.

#### Federal Action

On July 9, 2012, the federal Synthetic Drug Abuse Prevention Act of 2012 was signed into law. The law adds certain classes of synthetic cannabinoids and two substituted cathinones—mephedrone and MDPV—to the federal controlled substances act.

#### States with Legislation Outlawing Synthetic Drugs:

STATE	SYNTHETIC CANNABINOIDS	SUBSTITUTED CATHINONES	STATE	SYNTHETIC CANNABINOIDS	SUBSTITUTED CATHINONES
Alabama	X	X	Montana	X	
Alaska	X	X	Nebraska	X	
Arizona	X	X	Nevada		X
Arkansas	X	X	New Hampshire		
California	X		New Jersey		X
Colorado	X	X	New Mexico	X	X
Connecticut	X	X	New York		X
Delaware	X	X	North Carolina	X	X
Florida	X	X	North Dakota	X	X
Georgia	X	X	Ohio	X	X
Hawaii	X	X	Oklahoma	X	X
Idaho	X	X	Oregon		
Illinois	X	X	Pennsylvania	X	X
Indiana	X	X	Rhode Island	X	X

STATE	SYNTHETIC CANNABINOIDS	SUBSTITUTED CATHINONES	STATE	SYNTHETIC CANNABINOIDS	SUBSTITUTED CATHINONES
Iowa	X	X	South Carolina	X	X
Kansas	X	X	South Dakota	X	X
Kentucky	X	X	Tennessee	X	X
Louisiana	X	X	Texas	X	X
Maine	X	X	Utah	X	X
Maryland		X	Vermont		
Massachusetts		X	Virginia	X	X
Michigan	X	X	Washington		
Minnesota	X	X	West Virginia	X	X
Mississippi	X	X	Wisconsin	X	X
Missouri	X	X	Wyoming	X	X
			Puerto Rico	X	X
<b>TOTAL BANS PER SUBSTANCE</b>				<b>42</b>	<b>44</b>
<b>TOTAL BANS ON BOTH</b>				<b>40</b>	

Source: <http://www.ncsl.org/research/civil-and-criminal-justice/synthetic-drug-threats.aspx>

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## **Inspections, Compliance, Enforcement, and Criminal Investigations**

### **January 31, 2014: South Suburban Father and Son Indicted for Allegedly Operating \$2 Million Synthetic Marijuana Mail Order Business**



## **Food and Drug Administration Office of Criminal Investigations**

### **U.S. Department of Justice Press Release**

**For Immediate Release  
January 31, 2014**

**United States Attorney  
Northern District of Illinois**

CHICAGO — A father and son were indicted on federal charges for allegedly operating a nationwide mail order synthetic marijuana business in the south suburbs that netted them approximately \$2 million over three years, federal law enforcement officials announced today. Following an undercover investigation, JAMES M. BOLIN and his son, JAMES P. BOLIN, were charged with multiple offenses relating to misbranding and trafficking drugs, and James M. Bolin was also charged with money laundering. Both defendants allegedly defrauded and misled the Food and Drug Administration and the Drug Enforcement Administration regarding the drug status of their purported “herbal” products to avoid regulation of the drugs they sold.

Federal agents seized hundreds of packages of allegedly illegal synthetic cannabinoids, or a version of the psychoactive component of marijuana, as well as \$165,247, on June 4, 2013, when they executed a search warrant at James M. Bolin’s former residence in Manhattan, Ill., where he operated a business known as “Herbal City,” “H City,” “Shop HC,” and “Show Off City.” The defendants allegedly advertised the sale of misbranded drugs online and created videos to promote human consumption of their products.

James M. Bolin, also known as “James Matthew,” 49, and his son, James P. Bolin, aka “Jimmy,” 31, both of New Lenox, were each charged with one count of conspiracy to commit misbranding of drugs, four counts of placing misbranded drugs into commerce, five counts of receiving and delivering misbranded drugs, two counts of conspiracy to possess and distribute synthetic marijuana products, six counts of distributing controlled substances or analogues, and one count of attempting to do so. James M. Bolin alone was also charged with seven counts of money laundering.

The 26-count indictment, which also seeks the forfeiture of approximately \$2 million in illegal proceeds, was returned by a federal grand jury yesterday. The Bolins will be arraigned on a date yet to be determined in U.S. District Court.

According to the indictment, between January 2010 and June 2013, the defendants conspired to introduce, receive and deliver misbranded drugs into interstate commerce. The Bolins bought and sold products that they and their suppliers — located in California, Florida, and New York — falsely referred to as “incense,” “herbal incense,” “herbal potpourri,” and other misleading names, but, in fact, the drugs were falsely labeled, indicating they were not intended for human consumption when they actually were. The packages also failed to bear labels identifying the name and quantity of active ingredients, as well as the name and location of the manufacturer, packer, or distributor, the indictment alleges.

The indictment identifies the following products that the Bolins allegedly bought, marketed, and sold as misbranded drugs: *G-20 Herbal Potpourri*, *Joker Herbal Potpourri*, *Caution Blitzen Herbal Potpourri*, *Kronik Kryponite Herbal Potpourri*, *AK-47 24 Karat Gold Potpourri*, *ZenBio Sonic Zero Cherry*, *ZenBio Sonic Zero Blueberry*, *Hip Hop*, *Darkness Prince*, *Out World*, *Cherry Bomb*, *Caution Platinum Super Strong Incense*, *Caution Silver Super Strong Incense*, *Diablo Botanical Incense*, *Bizarro*, *Smoking Santa*, *Mr. Happy* and *OMG Next Generation*.

The indictment alleges that the defendants used the U.S. Postal Service and commercial carriers to ship and receive their illegal products and leased mailboxes in commercial stores in Frankfort and New Lenox. They allegedly paid at least \$1 million to out-of-state suppliers for the misbranded drugs they obtained, while collecting approximately \$3 million in revenue from customers between 2010 and June 2013.

The charges were announced by Zachary T. Fardon, United States Attorney for the Northern District of Illinois; Gary Hartwig, Special Agent-in-Charge of U.S. Immigration and Customs Enforcement’s (ICE) Homeland Security Investigations (HSI) in Chicago; John Redmond, Special Agent-in-Charge of the Food and Drug Administration’s Office of Criminal Investigations in Chicago; Jack Riley, Special Agent-in-Charge of the Chicago office of the Drug Enforcement Administration; James C. Lee, Special Agent-in-Charge of the Internal Revenue Service Criminal Investigation Division; and Tony Gómez, Inspector-in-Charge of the U.S. Postal Inspection Service in Chicago. The Illinois State Police also assisted in the investigation, which was conducted under the umbrella of the Organized Crime Drug Enforcement Task Force (OCDETF).

The government is being represented by Assistant U.S. Attorney Matthew Schneider.

Each count in the indictment contain various maximum penalties, ranging from three years in prison on the misbranded drug counts to 20 years in prison on the controlled substance counts and some of the money laundering counts against James M. Bolin. Each count also carries a maximum fine ranging between \$250,000 and \$1 million. If convicted, the Court must impose a reasonable sentence under federal sentencing statutes and the advisory United States Sentencing Guidelines.

The public is reminded that an indictment contains only charges and is not evidence of guilt. The defendants are presumed innocent and are entitled to a fair trial at which the government has the burden of proving guilt beyond a reasonable doubt.

###

Page Last Updated: 01/31/2014

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U.S. Department of **Health & Human Services**

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# Anti-synthetic drug bill delayed in Juneau

Sean Doogan | March 5, 2014

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This WTF brand synthetic marijuana was purchased from an Anchorage retailer on Sept. 25, 2013, before the municipality's anti-Spice ordinance was passed. The Alaska Senate Judiciary Committee said this week it wants more time to work on the language of a bill that would impose a \$500 fine for anyone caught with Spice or similar drugs.

*Loren Holmes photo*

A bill that would go after people who sell, possess and use synthetic drugs like bath salts and Spice was delayed in an Alaska Senate Judiciary Committee meeting on Wednesday. Committee members said the proposed law -- written by Sen. Kevin Meyer (R-Anchorage) -- was too broadly-worded, and they want extra time to consult with the Alaska Department of Law before moving it to the full Senate. The delay didn't seem to frustrate Meyer, who said he expects his bill -- SB 173 -- to have another hearing on Friday and possibly go to the full Legislature later this session.

Spice is a synthetic drug intended to mimic the high people get after smoking marijuana. It is sold in 2- or 3-ounce packages with cartoonish labeling and, often, sinister-sounding names like "Dead Man" and "Red Eye." It is sold as potpourri, incense, plant food, and even iPod cleaner. But everyone knows it is really just a quasi-legal way to get high. Previous attempts to ban the drug have failed because as soon as a law is passed outlawing the often complex and sometimes deadly concoction of chemicals that are used in the drug, the chemists -- located mostly in China -- change the formula.

In January, the Anchorage Assembly passed an anti-Spice ordinance, patterned after an ordinance from Bangor, Maine, that goes after people selling and using Spice as a minor criminal offense. The law imposes a \$500 fine for people caught with Spice and its packaging. Since the bill's passage, Spice has all but disappeared from the streets and store shelves in Anchorage. But it can be found. Spice is still readily available in the Matanuska and Susitna valleys, where a local family believes the drug killed 18-year-old Kurtis Hildreth in November 2013. An attempt by the Wasilla City Council in late February to pass an ordinance similar to the one in Anchorage failed by a single vote. Supporters of that effort said they will rewrite the ordinance and try again to get it passed. Meyer said he isn't worried his proposed statewide Spice law is in danger of a similar fate.

"I think we are OK for the first committee meeting in front of a bunch of lawyers," Meyer said.

One of those lawyers, Sen. Bill Wielechowski, D-Anchorage, said although he supports the idea of the bill, some of its language worried him.

Wielechowski said he was concerned with the legal definition of a drug under the law which reads a substance can be considered an illegal drug if "the packaging or labeling of the synthetic drug suggests that the user will achieve euphoria, a hallucination, mood enhancement, relaxation, stimulation, or another effect on the body."

"As I read this, we are criminalizing caffeine, and even Red Bull," Wielechowski said.

**Pull out the jump ropes,  
challenge your kids to a  
basketball game or go sledding.**



Meyer said he will work with the committee and the Department of Law to address the concerns about his bill, which garnered six co-sponsors when it was introduced on Feb. 14. But Meyer, who also wrote the original anti-Spice laws passed in 2011, said he won't give up on his new approach to rid the state of the drug.

"This is a rabbit I have been chasing for several years," Meyer said.

## Edra Morledge

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**From:** Brandon Wall <brandonw.wall@gmail.com>  
**Sent:** Friday, April 11, 2014 12:40 PM  
**To:** Rep. Wes Keller; Rep. Bob Lynn; Rep. Neal Foster; Rep. Gabrielle LeDoux; Rep. Charisse Millett; Rep. Lance Pruitt; Rep. Max Gruenberg  
**Cc:** Sen. Kevin Meyer; Rep. Lynn Gattis  
**Subject:** SB 173

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Honorable Representative Keller and members of the House Judiciary Committee,

As a member of the Wasilla City Council, I have spent a considerable amount of time over the last couple of months studying methods that cities have taken to address synthetic drug problems. I initially voted against the ordinance that was brought up in Wasilla on February 24th, partly because the language was so broad.

I would like to commend Sen. Meyer and his staff for the work that has been done on SB 173. There are some significant differences between the language in the ordinance that was voted down in Wasilla and SB 173 that eliminate a lot of the concerns that I had with mistaken citations. In fact, I have submitted the language used in this SB 173 as an amendment for discussion when the Wasilla City Council takes up this issue again on April 14th.

That said, I would encourage the members of this committee to support this legislation, with the following caveat - although this is only a citation, it is still a drug citation. This will be on an offender's record forever and viewable through courtview and background checks. What is not addressed in this bill is how juveniles would be treated. As written, it is my understanding that a juvenile cited for this would have this on his or her record indefinitely. Kids make mistakes but I think we all hope that they learn from those mistakes and grow from them. It would be a shame if a mistake like this haunted them throughout the rest of their youth and into adulthood, possibly costing them opportunities for jobs, education, etc.

But in all, I think this bill needs to be passed to address this critical issue.

Thanks for your consideration,

Brandon Wall  
Wasilla, AK