

SB

173

<TARGET><BILL>SB 173</BILL><SUBJECT>SB
173</SUBJECT><COMM>SJUD28</COMM></TARGET>

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 gas stations 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

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

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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
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(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

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

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

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

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: 3/14/14

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 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES	FY 2015	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Personal Services	***		***	***	***	***	***
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	***	0.0	***	***	***	***	***

Fund Source (Operating Only)

None							
Total	***	0.0	***	***	***	***	***

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

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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: <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: 3/14/14

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 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES	***		***	***	***	***	***	***
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	***	0.0	***	***	***	***	***	***

Fund Source (Operating Only)

None								
Total	***	0.0	***	***	***	***	***	***

Positions

Full-time								
Part-time								
Temporary								

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

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 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES	FY 2015	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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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:	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.

Police: Spice still on the street, but off Anchorage shelves

By TEGAN HANLON

February 8, 2014



A new Anchorage ordinance cracks down on designer drugs called Spice that are packaged as potpourri or incense. These packages were confiscated either by police, or when a person went to the sleep off center. Wednesday, Jan. 22, 2014. BILL ROTH — Anchorage Daily News

The new law banning Spice based on its packaging has swept the designer drug off Anchorage shelves, but not city streets, according to law enforcement.

Police have ticketed owners and employees at three shops caught selling the product since the Anchorage Assembly passed the ordinance on Jan. 14. By their second round of checks, packets of Spice disappeared, said Mark Karstetter, an Anchorage patrol officer and member of the Community Action Policing team.

"I think it's outstanding," Karstetter. "We've got compliance from pretty much everybody at the smoke shops."

Still, the ordinance hasn't knocked out street sales and the municipal prosecutor has voided at least two tickets issued for misidentified and legal smoking products.

Both Karstetter and Chris Schutte, executive director of the Anchorage Downtown Partnership, said that after the law passed people started traveling to Palmer or Wasilla to buy Spice in bulk and resell it in Anchorage.

When the green-colored contents are removed from its packaging, the new law is essentially ineffective. Spice is typically rolled into thin cigarettes called sticks and users compare the high to that of LSD or methamphetamine.

"On one hand the crooks can read and on the other hand Palmer and Wasilla aren't that far away," Schutte said.

An ordinance, similar to the one in Anchorage, is scheduled to be introduced to the Wasilla City Council Monday, according to the city's website.

Passage of the Wasilla ordinance would be another step to strangle the sale of Spice, an elusive drug that Alaska lawmakers have chased for years.

The Anchorage Assembly first attempted to stop sales in 2010, passing an ordinance to ban the drug, considered a synthetic cannabinoid, based on its chemical composition. The state soon followed.

But manufacturers quickly shifted ingredients, spraying different psychotropic compounds on herbal mixtures and staying one step ahead of the law.

Now, police can ticket a shop based on what's on the outside of the Spice package, often marketed as potpourri or incense, and not its contents. If a packet is printed with one of the more than 100 criminalized names for Spice or doesn't list ingredients and the manufacturer's address, it's

considered illegal, said Municipal Prosecutor Cynthia Franklin, who helped write the legislation.

The labeling guidelines haven't necessarily made for perfect identification and Franklin has voided tickets issued for legal products.

It's why Scot Dunnachie, owner of Planet X in Spenard, is fighting back.

He stopped selling the drug soon after the ordinance passed, but an employee at his shop received a \$500 ticket for selling marshmallow root on Jan. 21.

Marshmallow root is an herb sold in brightly-colored packaging, sometimes found in tea and intended to produce calming effects. Planet X sells 7-gram packages for \$10 while the cheapest Spice on the market sold for \$10 per gram, Dunnachie said.

"On the ticket it says possession of illicit drugs," he said. "The fact that they're just going off the law that was written, the law says that they can walk in and grab anything they want and charge you that it is Spice."

Franklin said it was "just a little bit of a training issue" and officers were looking at similar products they may have never seen before.

Karstetter said some of the legal herbs look "remarkably like synthetic cannabinoids" and police were instructed to issue a ticket, confiscate the packet and then examine the intent of the ordinance. Police issue tickets to both employees and owners -- whoever is there, he said.

"And then we looked back and dismissed the citation," he said.

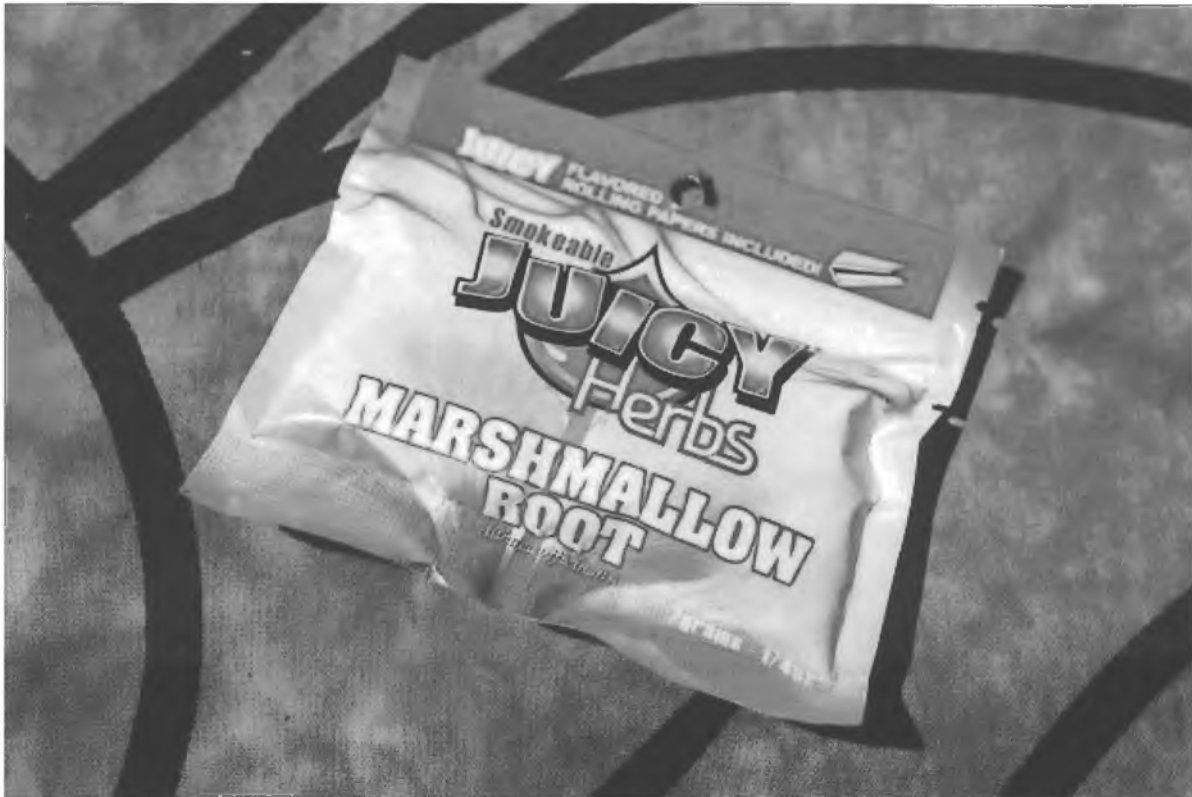
As police finish up check backs at nearly 20 stores that once sold Spice in Anchorage, Karstetter expects to hand ticketing over to full patrol soon.

Reach Tegan Hanlon at thanlon@adn.com or 257-4589.

Three weeks after city enacts new law, Spice hard to find in Anchorage

Sean Doogan

February 4, 2014



Marshmallow root for sale at Planet X. Planet X in Anchorage sells tobacco and non-tobacco products, and Anchorage police recently confiscated some of the latter under a new Spice ordinance.

Three weeks after the Anchorage Assembly passed a new approach to getting rid of the synthetic drug known as Spice, the drug seems to have disappeared from the shops, if not the streets, of Anchorage. But the new ordinance -- modeled after a novel approach tried in Bangor, Maine -- has drawn criticism from local smoke and head shop owners as well as civil libertarians, who contend it is too broad.

Since the ordinance became law Jan. 23, Anchorage police have issued three tickets to local shops accused of selling Spice. At least two of those citations have been dismissed by Anchorage's municipal prosecutor as cases of mistaken identity. In one, police ticketed a clerk at Planet X -- a

Spenard smoke and novelty shop -- for possession of synthetic drugs. The substance in question was actually marshmallow root, a tobacco alternative with no known narcotic effects.

Like most shops around Anchorage, Planet X stopped selling Spice immediately after the new ordinance passed in January. Alaska Dispatch visited more than a dozen Anchorage shops that -- according to a joint Air Force-Anchorage police investigation in 2013 -- previously sold the drug, but has been unable to find it for sale. When asked, most clerks said their store quit selling Spice because of the new ordinance.

"We don't want to sell Spice and if they actually did something about it and stopped it, we would be fine with it," said Planet X owner Scot Dunnachie. "We have no problem not selling it."

Cocktail of chemicals

Dunnachie said he is working to have the citation expunged from his clerk's record, now that the matter has been dropped.

Spice is touted as a synthetic alternative to marijuana. It is, in reality, a cocktail of chemicals that act more like LSD and PCP than opiates such as marijuana. A Wasilla family blames the drug for the death of 18-year old Kurtis Hildreth. Hildreth's body was found in November, crumpled against a wall in his bedroom, a pipe filled with Spice in his lap.

In 2010, Anchorage passed a law banning the drug, which is often sold in smoke and head shops. But the ordinance, like most anti-Spice laws targeted the chemical combinations of the many varieties that were found in Alaska. But the people producing Spice -- the federal Drug Enforcement Administration (DEA) believes most of the chemicals come from China -- simply changed their formulas, creating a new wave of "legal" Spice that again flooded Alaska and Anchorage.

The ordinance passed in January does not make possessing or selling Spice a criminal offense. Instead, like officials in Bangor, Maine, Anchorage prosecutors crafted a law to treat Spice as a minor offense -- but one that comes with a hefty \$500 fine. The ordinance avoids the problem of going after an ever-shifting mixture of chemical combinations by treating the drug for what it isn't. Most Spice is sold under other names, like potpourri, incense or iPod cleaner. But the packages do not contain manufacturing

information or ingredients, and sell for a higher price -- \$20 for 2 grams -- than the products they claim to be. The Anchorage law goes after anyone selling or possessing Spice because the drug packaging does not meet city requirements. Disclaimers on some Spice packages that say "not for human consumption" aren't enough to make them legal, according to the new ordinance.

The approach has worked in Bangor, and officials in Anchorage are hoping it will work there too. And at least one state senator is working to take the Anchorage ordinance statewide.

"You start hitting them where it hurts, which is in the money, and it works," Sen. Kevin Meyer, R-Anchorage, said.

Meyer is working to mimic the Anchorage ordinance at a state level. He has cosponsored several anti-synthetic drug bills, including the current Alaska law regarding Spice and said he is frustrated with the process.

"In the past we have listed chemical compounds, and they simply just change the formula and then they are back on the streets," Meyer said. The Anchorage approach -- to go after packages that claim to be incense or potpourri but are really used to get high -- may face a legal challenge. At least one legal advocacy group sees potential problems with the law. The American Civil Liberties Union of Alaska said the new Anchorage Spice law may be too broadly worded.

Joshua Decker, the local ACLU director, said he believes that the law could be thrown out by a judge because it could be applied to too many consumer goods, such as coffee and plant food. Planet X owner Dunnachie said he too believes the new law has gone too far.

"The new law says they can just walk in and say, 'this is against the law,' and whether they have evidence or not, they can charge you for it," Dunnachie said.

Until any legal challenge comes, the ordinance appears to be having its desired effect: Spice is difficult to find in Anchorage.

Anchorage municipal prosecutor Cynthia Franklin wants to keep it that way and promised that police and city officials would soon be back inside shops

that may be tempted to sell the drug -- which can bring in huge profits. And at least one shop clerk, who used to sell the drug at a store in Midtown Anchorage, is OK with that.

"Personally, I am glad we don't sell that crap anymore," said the clerk, who did not want her name used. "That stuff made people crazy."

Contact Sean Doogan at [sean\(at\)alaskadispatch.com](mailto:sean(at)alaskadispatch.com)

Anchorage police write first tickets to retailers under new Spice law

By TEGAN HANLON

Anchorage Police have begun slapping tickets on local smoke shops and gas stations caught selling a designer drug called Spice.

Businesses market it as "potpourri" or "incense," but police and others say they've seen users high on the synthetic material, regardless of its name, plaguing the city at increasing rates. Users' behaviors range from comatose to psychotic, some collapse onto the sidewalk and some smash windows, police said.

The Anchorage Assembly passed an ordinance last week, effective immediately, in hopes of cracking down on the drug, forbidding its sale based on a list of labeling criterion that manufacturers currently do not meet.

"This is just the piece of the puzzle," said Municipal Prosecutor Cynthia Franklin, who helped write the legislation. "This is just a little ordinance designed to address a very specific part of the problem, this open-air dealing and this myth that because it can be sold and can be bought over the counter it must be safe."

Under the new law, labels on containers, vials and tubes that contain the drug must accurately identify the substance, detail the name of the manufacturer and provide directions for use, among other strict guidelines.

The law spells out more than 100 now criminalized names for Spice like "Space Truckin," "Dr. Feel Good," "Puff," "The Hampster," "Dead Man," and "Funky Monkey 20X."

Police have issued three \$500 warning tickets as of Tuesday to businesses with Spice still on store shelves, said Sgt. Mark Rein who leads the Community Action Policing team.

If police return and it's still for sale, a shop will be fined \$500 per unit, Rein said. The same goes for individual users.

Possessing, using, providing, selling, producing, manufacturing, distributing, offering, displaying, marketing or advertising the synthetic drug is considered a minor offense. If the fine is paid, the charge is erased, Franklin said.

"Nobody can go to jail under this ordinance," she said.

CHASING SPICE

Spice isn't new to Anchorage, but its ever-changing ingredients have dizzied lawmakers and complicated police enforcement.

To make the drug, manufacturers spray psychotropic compounds on plant material. Choosing one of the dozens of colorful Spice packages is like dipping your hand into a chemical grab bag -- each one a little different, each high uncertain, Franklin said.

"They are making this stuff up as they go along," she said. "The compound and the name and the packaging."

In November 2010, the Assembly outlawed Spice, what it called a "synthetic cannabinoid," on the basis of its composition. "1-Pentyl-3-(1-naphthoyl)indole" and more than ten other compounds became illegal.

The state followed suit within the next year.

But manufacturers quickly shifted ingredients to sidestep the law here and elsewhere. The Anchorage Assembly and state Legislature remained one step behind, Franklin said.

Police could issue Spice users civil citations, a \$300 fine, under the 2010 ordinance. But Rein said this happened sporadically. Police would have to interview suspects and they'd have to admit to using the drug.

Potpourri and incense stayed on store shelves.

For the past year-and-a-half, Franklin searched for the right language to criminalize Spice as usage in the city, she said, continued to spiral out of control.

"We saw problems increase, the complaints increased, the ER calls increased," she said.

'WE SEE IT ON A REGULAR BASIS'

Lincoln said Spice is a growing problem among soldiers and North Slope workers looking to get around mandatory drug tests.

"It's extremely dangerous, it's unregulated and it's being marketed to our young people for the profit of a greedy few and to the detriment of our entire community," Franklin said.

Monitors at Bean's Cafe, the downtown soup kitchen, said they have watched Spice usage surge and spread from younger clients to the older as well.

"It is pretty prevalent, we see it on a regular basis," said Daniel Garcia, a volunteer monitor.

He described Spice as a green-colored "pocket lint." He's caught clients rolling thin cigarettes using Spice on cafe tables. They sell for \$2 and are called sticks, Garcia said. Just this week, he kicked out five people smoking "sticks" on Bean's Cafe property.

The drug's side effects vary from paranoia to violence to a "zombie state," he said.

One man marched in circles in the parking lot for four hours. A woman stripped off her clothes and ran around the cafe. Another person attempted to choke a monitor. Seizures are common for those who mix Spice and alcohol, he said.

"I don't know what's going through their head, but they're not aware of what they're doing," Garcia said.

He said he has sat outside with many clients high on Spice while they come down. It usually takes less than 30 minutes. He compared the effects of Spice to LSD or methamphetamine.

Garcia said he's observed generally-healthy Spice users deteriorate. Some mutter and talk to themselves even when they haven't been smoking.

Chris Schutte, executive director of the Anchorage Downtown Partnership, said Spice has "had a profound impact on downtown, primarily because of the unpredictably."

He said he's seen people collapse on the sidewalk and others stroll down streets punching everything in range. A young woman was raped in Town Square Park in 2012 while she was incapacitated after smoking Spice, according to police and charging documents.

Schutte said the Downtown Partnership lumps Spice incidents in with all other drug related calls. In the winter of 2013, drug incidents trumped public intoxication -- a new trend, he said.

"People aren't giving up booze and taking up Spice," Schutte said. "They're either doing both or there's just a lot of people who want to smoke Spice."

Over at the Anchorage Safety Center, which takes in individuals incapacitated by drugs or alcohol, Spice prevalence has been on the upswing for more than a year, officials said.

"At first it was kind of an anomaly, but now it's becoming more and more common," said Mark Lessard, who manages the center's contract for the Department of Health and Human Services.

The center can't test for Spice, but Lessard said a lot more people who are clearly incapacitated have passed Breathalyzer tests.

"We went to the municipal attorney's office and said, 'Hey, we've got this issue and what can be done?' " Lessard said.

SPICE MARKET

Elihue Lee, 33, of Mountain View, said he has smoked Spice about 20 times. He was told it was like marijuana, so he thought he'd try it.

Lee said he would get high for about 10 minutes at a time. He compared it to spacing out.

"I've seen people have seizures on Spice. I've seen people just have a good time on Spice. I've seen some people relaxed on Spice. It just depends on how much they consume at one time," he said.

Lee bought the drug at a local smoke shop, where he had to show ID to make the purchase, he said.

As of April 2013, 23 shops sold the drug in Anchorage, Franklin said.

Smoke King in Mountain View sold Spice (potpourri) up until nine months ago. Employees asked the manager to stop buying the product. They said the customer

base shifted. People who started coming to the shop wouldn't look them in the eye and were paranoid and nervous.

"We were making a lot of money, but at the same time we were like, 'We don't like dealing with these sketchy people,' " said Kent Monroe, an employee at the shop for two years.

Monroe said the shop would buy Spice packets for about \$5 and turn them around for \$15.

Franklin said it's likely manufacturers are ordering the product from out of state or online.

One woman who answered the phone at a number linked to a Miami-based distributor declined an interview. The website listed an array of incense brands, sold at just under \$35 for 10 grams.

She would not describe the products on the website or how the incense is used.

"I don't know anything, we just ship out," she said.

Rein said he's also observed people selling Spice on the streets, like marijuana or any other drug, which may pose as a problem for enforcement under the new ordinance since the drug is unlabeled.

"I think this will take it off the shelves," Rein said. "It may not completely dry up."

Reach Tegan Hanlon at thanlon@adn.com or 257-4589.

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**

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

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

WHEREAS, the Anchorage Police Chief has advised that the Anchorage Police Department is concerned that 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 application of current state and municipal laws is inefficient and usually ineffective, for the reasons described in the AM. The APD has verified the availability of a significant number of these products in the city. Along with the Municipal Prosecutor’s office, APD 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 or seizure; and

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

THE ANCHORAGE ASSEMBLY ORDAINS:

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

8.35.500 Illicit synthetic drugs.

- A. *Purpose.* The purpose of this section 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.
- B. *Definitions.* For purposes of this section, the following terms, phrases, 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 Hamster,
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

Alaska Dispatch

News and voices from the Last Frontier

Alaska Dispatch

January 10, 2014

The state has ruled 18-year-old Kurtis Hildreth's cause of death as "undetermined." But the aunt he had been staying with in Wasilla, Kerri Stevens (pictured), believes he was killed by the synthetic drug Spice -- and she and Hildreth's family plan to fight for answers. Loren Holmes photo

Kurtis Hildreth, 18, came to Alaska after graduating high school. He was living with his aunt's family in Wasilla to get a head start on the next phase of his life. But Hildreth's life didn't get a new beginning in the Last Frontier -- it ended abruptly, the young man found dead inside his room, a pipe filled with the synthetic drug known as Spice and a lighter, on the floor next to him. His family believes the drug killed him. But the state medical examiner and Alaska State troopers aren't sure.

Hildreth moved from Florida to spend time with his aunt, Kerri Stevens, and her family at their Wasilla home. Stevens said she wanted to show Hildreth around Alaska and offer him a job in her family's commercial glass shop. Stevens said she has always been close to Hildreth, her sister Kelli Farquer's oldest child, and was even there when he was born. She was also there when he died on Nov. 16, 2013, opening Hildreth's bedroom door to find her nephew's body crumpled against the wall. Hildreth's arms were still propped on the windowsill.

Related:

[Anchorage looks to Maine for clues to handle Alaska 'spice' problem](#)

[Chemical designer drugs like Spice pose new puzzle for lawmakers](#)

"Whatever hit him, (it) hit him hard and hit him fast," Stevens said as she recounted her nephew's death. "The pipe was right there by his feet. He was a healthy kid. The lighter was right there. The pipe was right there. He never had any kind of heart problems or seizures." (See the entire interview of Stevens)

Inside the pipe was some partially burned synthetic marijuana, commonly known as "Spice." The drug is gaining popularity as a legal marijuana alternative. It is, in reality, an unknown combination of chemicals usually made in China and shipped to the U.S., where it is sprayed

on plant material and packaged as incense or potpourri. Most of the packages have labels that say “not for human consumption” on them. And at \$20 for two grams, it is extremely expensive -- for incense. But everyone knows what the mixture is really used for: to get high.

Stevens and Farquer are certain Spice killed the otherwise healthy Hildreth. But the Alaska Medical Examiner’s Office has listed his death as “undetermined.”

Video of She found him dead, clutching spice pipe

Officially, no one has died as a result of smoking Spice in Alaska. As in many suspected cases, an autopsy of Hildreth’s body did not turn up any medical conditions or problems. A toxicity screening of his blood, bile and other body fluids did not turn up any signs of illegal drugs or alcohol. Hildreth’s death -- like an average of 28 others each year in Alaska -- will likely go unsolved, medically speaking. But not if Hildreth’s family -- and an Illinois mother who started an Internet crusade after the Spice-related death of her own son -- has anything to do with it.

The number of people killed by synthetic drugs each year is relatively unknown because most Spice-related deaths are listed as undetermined or as a result of something else. In September, Colorado officials began looking into three deaths that may have been caused by the drug. Internet sites like To the Maximus are rife with stories of both suspected and officially designated Spice-related deaths.

To the Maximus is a nonprofit anti-synthetic drug foundation started by Illinois mother Karen Dobner. Her son Max was killed in June 2011 after he smoked synthetic marijuana then ran his car into a house at more than 100 mph. Dobner had reportedly called his brother to say that he had smoked “that legal stuff” and was “freaking out.” But, as with Hildreth, Dobner’s death was not officially attributed to Spice.

“Currently only 22 of several hundred synthetic cannabinoids can be identified in blood fluids. They are actually looking for metabolites in blood, and it is a difficult and slow process to identify these chemicals,” Karen Dobner said.

Hildreth’s blood was tested for 300 known illegal drugs, including outlawed combinations of Spice. But when it comes to designer drugs, police and prosecutors are far behind the dealers. The chemists change their formulas often, trying to dodge laws aimed at their product. Such is the case in Alaska, where packages of synthetic drugs -- easily found on the shelves of dozens of Anchorage and Wasilla area stores -- have not tested positive for banned substances in months.

"It's not a marijuana alternative, and these newer chemicals have never been seen on earth before -- the kids are the lab rats," Dobner said.

In Hildreth's case, the drugs themselves were not tested to determine their composition. The state medical examiner has refused to discuss Hildreth's case, citing the privacy of the family. The Alaska State Troopers have finished their report into Hildreth's death, but it has not yet been released to his family.

Simply put, testing for the exact chemical composition in synthetic drugs can be a challenge. But it's not impossible. NMS labs, in Willow Grove, Pa., does the body fluids drug and chemical testing for the state of Alaska. And while synthetic drugs are difficult to find in blood because the body metabolizes them, they can be identified in the drug itself. It is this test Dobner and Hildreth's family want the state to carry out. Farquer said the troopers told her they could not submit the drugs to the lab because there appeared to be no criminal intent in Hildreth's death. Farquer said she is hiring a private attorney to get the drugs to the lab for testing.

"I know Spice killed my son," Farquer said.

Meanwhile, the Municipality of Anchorage is looking to rid itself of the drug. The Anchorage Assembly is set to consider a new law that will outlaw possession and sale of Spice, not based on the chemical makeup of the drug, but because of what officials say is deceptive marketing.

The drug can be bought in Alaska at local smoke and head shops. It's usually packaged with a cartoonish character and a devious-sounding name. Popular varieties include "Dead Man" and "Mr. Nice Guy." It is the latter -- inside a package adorned with a smiley face that has been shot through the head -- that Hildreth was smoking when he died.

"They market this crap to 12-year-olds. It has Scooby-Doo on the front of it, smiley faces, SpongeBob -- I mean, that's who its being marketed to. It's horrible," Stevens said.

Hildreth's best friend, Brandon Jenkins, said the 18-year-old called him the night before he died. Jenkins said Hildreth told him he was smoking Spice. Jenkins advised his friend to stop. Now that Hildreth is dead, Jenkins is warning other teens to stay away from Spice."

"It isn't worth it," Jenkins said. "Life will lead you in better directions than this stuff will. Life has many opportunities, and death only has one."

Contact Sean Doogan at sean@alaskadispatch.com.

Prosecutors lead effort to make fake pot illegal in Anchorage

By CASEY GROVE

With the designer drug known as Spice easily available in Anchorage, often retailed as potpourri or incense, municipal prosecutors are trying to make it illegal to sell and possess by rewriting local drug laws to make them broader and get ahead of the manufacturers.

Attempts by federal and state lawmakers to criminalize the drug, which is marketed by word of mouth as a legal alternative to marijuana, have fallen short. Local law enforcement officials say that is because the makers of Spice have sidestepped controlled-substance laws by tweaking chemical compounds to no longer fit the drug definitions that lawmakers write into controlled-substances laws. Changing the formulas allows Spice-makers to stay one step ahead of the law, prosecutors say.

The new criminalization effort in Anchorage comes in the form of a proposed amendment to a municipal drug ordinance introduced at Tuesday night's Assembly meeting and set for public hearing Jan. 14. It aims to cut through the haze of confusion by criminalizing Spice, not for what it is, but for what it isn't.

"In other words, you find a legal way to describe what these are without calling them by their chemical composition," said Municipal Prosecutor Cindy Franklin, who helped write the ordinance. "Because, frankly, nobody knows what this is, even the people making it."

If passed, the new law would require Spice packaging to include labels that say specifically what is contained in the packets or jars and the name of the manufacturer. And the packaging cannot be "false or misleading" and must carry accurate directions for use. The penalty for possession: \$500 per unit of sale.

The stakes are high, say Franklin and police officials. Users, increasingly teenagers, are having bad physical and psychological reactions after smoking Spice or ingesting it in other ways, they say. It can make people paranoid and panicky, according to a memorandum attached to the proposed ordinance amendment. Anchorage police have described users becoming unpredictable and psychotic.

"The short-term physiological effects include increased heart rate and increased blood pressure, and the long term physiological effects are unknown," the memo says.

Spice can also make someone comatose, as was the case with a young woman raped at Town Square Park in 2012 while she was incapacitated after smoking Spice, police and charging documents said.

There are dozens of brands of the leafy material sprayed with chemicals and sold over the counters of smoke shops and some gas stations as incense or potpourri. But the products in colorful packaging emblazoned with names like "Scooby Snax" and "Crippler" are really intended for human consumption, even if the packets claim they are not, Franklin said.

"This is a drug, and everybody knows it," she said. "People are just making gobs of money selling it, and bragging about it. If you ask them what they're selling, they have no idea."

At The Smoke Shoppe in Mountain View on Wednesday, glass pipes, bongos and hookahs sat in display cases or lined the wall on one side of the business. At the front of the store were tobacco products and rolling papers. When asked if the store sold any Spice, a woman behind the counter said they did not.

"No, we carry potpourri," she said. "It's on the back wall."

Directly behind the pipes, tacked to the wall, was a small display with packets of the purported potpourri. The display advertised a packet holding two grams of "Green Dream" for \$20 and a packet with five grams of "Lazy Daze" for \$20 with a sticker that said, "Sweet deal!!"

The clerk declined an interview request. The store's manager was not there, and an email to the manager was not returned Wednesday. The clerk did not provide a phone number.

Paul Honeman -- an Assembly member on the Public Safety committee, a University of Alaska Anchorage police officer and a former Anchorage cop -- said he recently walked into a shop while investigating a theft on campus. The suspect used a stolen credit card at a smoke shop to buy two packets of "potpourri."

Honeman was in uniform and the clerk talked to him openly about what he believed was Spice.

"I said, 'Man that stuff's no good,' and she goes, 'Yeah, I know. I wouldn't use it,'" Honeman said. "She's not the owner. She's not even the manager. She's just a clerk. But they're pushing this stuff out the door. I mean, they've got boxes of the stuff."

Both Honeman and Franklin admitted it might be a challenge to prove that retailers are not simply selling very expensive potpourri or incense. The additional requirements for packaging - forcing manufacturers to say what is in their product -- is designed to help with that, Franklin said. Honeman said it comes down to common sense.

"If you sell it, you know, for 20 times the cost of what somebody would pay for potpourri or incense, and you look on the packaging and it doesn't really contain any ingredients that says what it is, I think that's the answer," Honeman said. "Attack it for what it's not."

Reach Casey Grove at casey.grove@adn.com or 257-4343. Twitter updates: twitter.com/kcgrove.