

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6322 SENATE JUDICIARY

726

Reg	Dist	Name	Obscis #	YTD Paid:	LastActv	Balance Due
SC	ANCH	[REDACTED] Patrick J.	171834		09/02/88	0.00
SC	ANCH	[REDACTED] Christopher P.	162864	225.00	11/29/88	12.00
SC	ANCH	[REDACTED] Tyrnil	128142	45.00	08/30/88	42.00
SC	ANCH	[REDACTED] Tom	58236	270.00	12/01/88	37.00
SC	ANCH	[REDACTED] Tammy	126075	270.00	11/29/88	45.00
SC	ANCH	[REDACTED] Garland Darrel	123666	225.00	09/29/88	0.00
SC	ANCH	[REDACTED] Terry	122841	202.00	08/30/88	-18.50
SC	ANCH	[REDACTED] John C.	148470	135.00	09/29/88	0.00
SC	ANCH	[REDACTED] Connie L.	151083	50.00	08/30/88	355.00
SC	ANCH	[REDACTED] Steven C.	132402	180.00	11/29/88	-0.50
SC	ANCH	[REDACTED] Roscoe L.	2922		09/02/88	0.00
SC	ANCH	[REDACTED] Michael T.	167301	135.00	11/29/88	55.50
SC	ANCH	[REDACTED] Daniel	24732	90.00	08/30/88	0.00
SC	ANCH	[REDACTED] Albert	155196	90.00	11/29/88	43.50
SC	ANCH	[REDACTED] Dennis H.	162867	100.00	12/01/88	105.50
SC	ANCH	[REDACTED] Betty	160044	90.00	12/01/88	0.00
SC	ANCH	[REDACTED] Ronda	127344	225.00	12/01/88	315.00
SC	ANCH	[REDACTED] Byong Hak	115251	135.00	11/29/88	301.50
SC	ANCH	[REDACTED] Gale	153645	135.00	09/29/88	0.00
SC	ANCH	[REDACTED] John W.	135234	192.00	11/29/88	0.00
SC	ANCH	[REDACTED] James	125313	45.00	08/31/88	0.00
SC	ANCH	[REDACTED] Lane T.	169695	90.00	11/29/88	127.50
SC	ANCH	[REDACTED] Walter	139545	65.00	11/29/88	145.00
SC	ANCH	[REDACTED] Michael	139509	180.00	12/02/88	0.00
SC	ANCH	[REDACTED] Cesar	163632	135.00	12/02/88	0.00
SC	ANCH	[REDACTED] Louis	115530	45.00	08/31/88	42.20
SC	ANCH	[REDACTED] Edna F.	152157	45.00	09/29/88	315.00
SC	ANCH	[REDACTED] Gerald	19494	135.00	09/29/88	1.50
SC	ANCH	[REDACTED] Mhammad	159240	225.00	11/29/88	45.00
SC	ANCH	[REDACTED] Deborah A.	137256	10.00	12/02/88	385.50
SC	ANCH	[REDACTED] Dennis	145755	225.00	12/02/88	112.50
SC	ANCH	[REDACTED] Kirk	178173	45.00	12/02/88	88.50
SC	ANCH	[REDACTED] Darlene (Shockly	154119	180.00	08/31/88	0.00
SC	ANCH	[REDACTED] Terry	167766	90.00	08/31/88	45.00
SC	ANCH	[REDACTED] Forrest	157602	135.00	11/29/88	123.00
SC	ANCH	[REDACTED] Simon	49764	135.00	11/29/88	0.00
SC	ANCH	[REDACTED] Vincent W.	119367	225.00	12/02/88	-0.50
SC	ANCH	[REDACTED] Bradley	145122	180.00	11/29/88	0.00
SC	ANCH	[REDACTED] Kathy	156261	45.00	08/31/88	90.00
SC	ANCH	[REDACTED] Yvonne	174150	45.00	08/31/88	0.00
SC	ANCH	[REDACTED] Charles	166617	225.00	01/12/89	0.00
SC	ANCH	[REDACTED] Lamar	73953	135.00	11/29/88	0.00
SC	ANCH	[REDACTED] Christopher	127761	90.00	12/02/88	135.00
SC	ANCH	[REDACTED] Carmen	174762	94.00	11/29/88	50.00
SC	ANCH	[REDACTED] George E.	126888	4680.00	12/02/88	-4455.00
SC	ANCH	[REDACTED] Kimberly	161883	200.00	10/27/88	103.50
SC	ANCH	[REDACTED] Daniel C.	120423	135.00	11/29/88	90.00
SC	ANCH	[REDACTED] Carlos A.	130125	135.00	08/31/88	135.00
SC	ANCH	[REDACTED] Charles	136689	312.00	12/02/88	45.00
SC	ANCH	[REDACTED] Elikisone	148422	180.00	11/29/88	10.50
SC	ANCH	[REDACTED] Eddie	141348	360.00	11/29/88	0.00
SC	ANCH	[REDACTED] Nelson	172092	90.00	11/29/88	13.50
SC	ANCH	[REDACTED] Daryl	113898	135.00	12/02/88	0.00
SC	ANCH	[REDACTED] Brian	155937	135.00	10/27/88	0.00

Reg	Dist	Name	Obscis #	YTD Paid:	LastActv	Balance Due
SC	ANCH	[REDACTED] Kenneth C.	71163	45.00	08/31/88	120.00
SC	ANCH	[REDACTED] Susan P.	159969	185.00	12/02/88	85.00
SC	ANCH	[REDACTED] Steven	170187	135.00	12/02/88	16.50
SC	ANCH	[REDACTED] Dedrick	133437	90.00	12/02/88	90.00
SC	ANCH	[REDACTED] Darrell R.	42423	180.00	12/02/88	45.00
SC	ANCH	[REDACTED] Jeffrey	166356	45.00	10/27/88	100.50
SC	ANCH	[REDACTED] Brad	174597	49.50	09/29/88	10.50
SC	ANCH	[REDACTED] Russell D.	114384	45.00	08/31/88	225.00
SC	ANCH	[REDACTED] Linda	162297	135.00	11/29/88	90.00
SC	ANCH	[REDACTED] Philip	126843	180.00	09/29/88	0.00
SC	ANCH	[REDACTED] Mavis	167013	90.00	12/02/88	55.50
SC	ANCH	[REDACTED] Ivan	139065	135.00	09/29/88	25.50
SC	ANCH	[REDACTED] Sabrina	145866	135.00	12/02/88	45.00
SC	ANCH	[REDACTED] Charles W. Jr.	60402	200.00	12/02/88	349.50
SC	ANCH	[REDACTED] David	147240	225.00	09/29/88	45.00
SC	ANCH	[REDACTED] Lynwood J.	149943	231.00	12/02/88	30.00
SC	ANCH	[REDACTED] Brian	158106	120.00	09/29/88	0.00
SC	ANCH	[REDACTED] Arthur	138111	760.00	12/02/88	-20.50
SC	ANCH	[REDACTED] Gary Richard	118536	90.00	11/29/88	118.50
SC	ANCH	[REDACTED] Gus A.	174888	0.00	09/02/88	45.00
SC	ANCH	[REDACTED] Calvin	110286	180.00	12/02/88	0.00
SC	ANCH	[REDACTED] Randy	147798	135.00	09/29/88	0.00
SC	ANCH	[REDACTED] Sally Jo	135030	30.00	11/29/88	-4.50
SC	ANCH	[REDACTED] Dean	50043	90.00	08/31/88	-10.50
SC	ANCH	[REDACTED] Kevin	181032	102.00	11/29/88	0.00
SC	ANCH	[REDACTED] Fei	45729	180.00	11/29/88	0.00
SC	ANCH	[REDACTED] Jason A.	136113	180.00	11/29/88	0.00
SC	ANCH	[REDACTED] Timothy	148449	10.00	08/31/88	230.00
SC	ANCH	[REDACTED] Norman	37413	135.00	12/02/88	0.00
SC	ANCH	[REDACTED] Denali Beth	143448	106.50	08/31/88	45.00
SC	ANCH	[REDACTED] Ted	167748	90.00	08/31/88	0.00
SC	ANCH	[REDACTED] Mark M.	151350	225.00	12/02/88	45.00
SC	ANCH	[REDACTED] Rebecca	120138	135.00	11/29/88	180.00
SC	ANCH	[REDACTED] Ethan D.	160560		09/02/88	0.00
SC	ANCH	[REDACTED] Dennis	155037	360.00	12/02/88	-16.50
SC	ANCH	[REDACTED] Nancy	124959	180.00	12/02/88	0.00
SC	ANCH	[REDACTED] Bryson	151911	180.00	12/02/88	0.00
SC	ANCH	[REDACTED] Charlotte	177549	45.00	12/02/88	0.00
SC	ANCH	[REDACTED] Robert	163725	60.00	12/02/88	0.00
SC	ANCH	[REDACTED] Donald	136908	90.00	09/29/88	45.00
SC	ANCH	[REDACTED] Tony	167754	108.00	08/31/88	0.00
SC	ANCH	[REDACTED] Kerry	59976	90.00	09/29/88	45.00
SC	ANCH	[REDACTED] Sandy	139644	135.00	09/29/88	35.00
SC	ANCH	[REDACTED] Thomas C.	49524		09/02/88	0.00
SC	ANCH	[REDACTED] Sheila E.	140748	225.00	12/02/88	0.00
SC	ANCH	[REDACTED] Michael A.	116415	135.00	09/29/88	0.00
SC	ANCH			25057.64		4209.82
SC	KENI	[REDACTED] Clarence	158577	66.00	08/23/88	0.00
SC	KENI	[REDACTED] Perry	147786	270.00	12/22/88	0.00
SC	KENI	[REDACTED] Michael	70188	315.00	11/29/88	0.00

Reg	Dist	Name	Nbscis #	YTD Paid:	LastPctv	Balance Due
SC	KENI	[REDACTED] Suetta	139329	260.00	12/22/88	10.00
SC	KENI	[REDACTED] John	160935	180.00	11/29/88	0.00
SC	KENI	[REDACTED] Billy	146118	270.00	12/22/88	0.00
SC	KENI	[REDACTED] Edwin Jr.	55677	400.00	11/29/88	5.00
SC	KENI	[REDACTED] Howard	135855	225.00	09/23/88	0.00
SC	KENI	[REDACTED] Duff	72498	360.00	12/22/88	0.00
SC	KENI	[REDACTED] Loren	124818	180.00	11/29/88	0.00
SC	KENI	[REDACTED] Martin	136653	405.00	11/29/88	69.00
SC	KENI	[REDACTED] Mark	17298	298.00	12/22/88	2.00
SC	KENI	[REDACTED] Nathan P.	144432	270.00	12/22/88	0.00
SC	KENI	[REDACTED] Paul	111393	0.00	08/23/88	135.00
SC	KENI	[REDACTED] Robert	144627	585.00	12/22/88	0.00
SC	KENI	[REDACTED] Victor S.	115932	90.00	11/29/88	40.50
SC	KENI	[REDACTED] Scott	162366	270.00	12/22/88	12.00
SC	KENI	[REDACTED] Aaron	139056	691.00	11/29/88	0.00
SC	KENI	[REDACTED] Dwayne	139800	27.00	08/23/88	0.00
SC	KENI	[REDACTED] Raymond	147393	270.00	12/22/88	0.00
SC	KENI	[REDACTED] David	158109	180.00	12/22/88	148.50
SC	KENI	[REDACTED] Leonard B.	168285	180.00	12/22/88	90.00
SC	KENI	[REDACTED] Sidney Bruce	25758	135.00	12/22/88	28.50
SC	KENI	[REDACTED] David	148191	225.00	11/29/88	180.00
SC	KENI	[REDACTED] Paul	140880	90.00	09/23/88	90.00
SC	KENI	[REDACTED] Pamela	120378	45.00	09/23/88	270.00
SC	KENI	[REDACTED] Kelly	164106	270.00	12/22/88	12.00
SC	KENI	[REDACTED] Ronald	139827	25.00	11/29/88	0.00
SC	KENI	[REDACTED] Brian J.	169827	45.00	09/23/88	0.00
SC	KENI	[REDACTED] Robert	131838	225.00	09/23/88	0.00
SC	KENI	[REDACTED] Alfred J.	159060	135.00	09/23/88	0.00
SC	KENI	[REDACTED] Hugh F.	135918	315.00	11/29/88	135.00
SC	KENI	[REDACTED] David	162939	225.00	12/22/88	0.00
SC	KENI			7527.00		1227.50
SC	KODK	[REDACTED] Arthur	15924	45.00	12/22/88	225.00
SC	KODK	[REDACTED] Carl M.	164631	130.00	09/23/88	21.50
SC	KODK	[REDACTED] Dante	156642	40.00	08/23/88	105.00
SC	KODK	[REDACTED] Timothy	49632	279.00	11/29/88	0.00
SC	KODK	[REDACTED] Joseph	84732	630.00	11/30/88	0.00
SC	KODK	[REDACTED] Barbara	163323	270.00	12/22/88	0.00
SC	KODK	[REDACTED] Scott	162234	415.00	12/22/88	-16.00
SC	KODK	[REDACTED] Norman	154494	205.00	11/29/88	105.00
SC	KODK	[REDACTED] Alfred	159363	775.00	11/29/88	-100.00
SC	KODK	[REDACTED] Forrestt	167181	100.00	11/29/88	26.50
SC	KODK	[REDACTED] Richard	101451	225.00	11/29/88	0.00
SC	KODK	[REDACTED] Wenceslao	154497	225.00	11/29/88	0.00
SC	KODK	[REDACTED] Juli	158364	400.00	08/23/88	-55.00
SC	KODK	[REDACTED] George	169017	180.00	11/30/88	0.00
SC	KODK	[REDACTED] Raymond	125622	198.00	11/29/88	90.00
SC	KODK	[REDACTED] Eric	139257	100.00	09/23/88	350.00
SC	KODK	[REDACTED] Michael	162945	45.00	11/29/88	0.00
SC	KODK	[REDACTED] Rick	158370	225.00	11/30/88	0.00
SC	KODK	[REDACTED] Cecilio L.	169923	230.00	12/22/88	45.00

Reg	Dist	Name	Obscis #	YTD Paid:	LastActv	Balance Due
SC	KODK	[REDACTED] RoseAnn	101568	339.00	11/29/88	0.00
SC	KODK	[REDACTED] Joseph	165033	98.50	11/29/88	9.00
SC	KODK	[REDACTED] Peter	124866	150.00	11/30/88	100.00
SC	KODK	[REDACTED] Anthony	180507	168.00	12/22/88	34.50
SC	KODK	[REDACTED] Jeff	171327	366.00	11/29/88	0.00
SC	KODK	[REDACTED] Jacob	53736	225.00	12/22/88	107.50
SC	KODK	[REDACTED] Joseph	165792	185.00	11/29/88	40.00
SC	KODK	[REDACTED] Sean	73707	185.00	11/29/88	125.00
SC	KODK			6433.50		1213.00
SC	PLMR	[REDACTED] John	114747	413.64	12/22/88	36.36
SC	PLMR	[REDACTED] Julie	162246	45.00	08/23/88	0.00
SC	PLMR	[REDACTED] John	167292	225.00	12/22/88	0.00
SC	PLMR	[REDACTED] Arthur	18183	826.93	12/22/88	-0.43
SC	PLMR	[REDACTED] Gordon	145653	145.00	11/30/88	35.00
SC	PLMR	[REDACTED] Dale	142644	1026.93	11/30/88	-936.93
SC	PLMR	[REDACTED] Aaron	121689	33.00	12/22/88	0.00
SC	PLMR	[REDACTED] Justin	143703	45.00	11/30/88	90.00
SC	PLMR	[REDACTED] Lorin	125454	270.00	12/22/88	0.00
SC	PLMR	[REDACTED] Robert	166332	350.00	12/22/88	0.00
SC	PLMR	[REDACTED] Tim	134355	45.00	08/23/88	0.00
SC	PLMR	[REDACTED] Tracy	137091	5.00	11/30/88	0.00
SC	PLMR	[REDACTED] Terr	134064	135.00	11/30/88	0.00
SC	PLMR	[REDACTED] Douglas	144630	135.00	12/22/88	90.00
SC	PLMR	[REDACTED] Ronnie	151203	225.00	12/22/88	0.00
SC	PLMR	[REDACTED] Era L.	175524	6.00	11/30/88	0.00
SC	PLMR	[REDACTED] James	27057	283.50	12/22/88	0.00
SC	PLMR	[REDACTED] Patrick	142482	90.00	11/30/88	10.00
SC	PLMR	[REDACTED] Lars S.	186702	88.50	12/22/88	0.00
SC	PLMR	[REDACTED] Sean	002	0.00	11/30/88	240.00
SC	PLMR	[REDACTED] Mike	178176	90.00	12/22/88	0.00
SC	PLMR	[REDACTED] Martin	142695	250.00	12/22/88	20.00
SC	PLMR	[REDACTED] Brian	82842	90.00	11/30/88	0.00
SC	PLMR	[REDACTED] James	165114	50.00	11/30/88	40.00
SC	PLMR	[REDACTED] Michael	90774	45.00	11/30/88	0.00
SC	PLMR	[REDACTED] Thomas	142674	270.00	12/22/88	0.00
SC	PLMR	[REDACTED] Kenneth	75483	45.00	08/23/88	0.00
SC	PLMR	[REDACTED] Ted	140232	225.00	12/22/88	0.00
SC	PLMR	[REDACTED] Terry	130893	135.00	11/30/88	0.00
SC	PLMR	[REDACTED] Pat	134358	45.00	08/23/88	0.00
SC	PLMR	[REDACTED] Richard F.	175533	90.00	12/22/88	0.00
SC	PLMR	[REDACTED] Mark	122595	270.00	12/22/88	26.50
SC	PLMR	[REDACTED] Danny Lee	147402	410.00	11/30/88	0.00
SC	PLMR	[REDACTED] Gordon	162243	194.00	12/22/88	-9.50
SC	PLMR	[REDACTED] Jim	124446	225.00	12/22/88	0.00
SC	PLMR	[REDACTED] Larry	180525	45.00	11/30/88	0.00
SC	PLMR	[REDACTED] Larry	143781	180.00	08/23/88	0.00
SC	PLMR	[REDACTED] John	142662	45.00	11/30/88	54.00
SC	PLMR	[REDACTED] Sean	142512	45.00	11/30/88	0.00
SC	PLMR	[REDACTED] Otto	125187	225.00	12/22/88	0.00
SC	PLMR	[REDACTED] Patrick	137112	285.00	12/22/88	-1.50

Reg	Dist	Name	Obscis #	YTD Paid:	LastActv	Balance Due
SE	KETN	[REDACTED] Ed	154896	135.00	09/23/88	-24.00
SE	KETN	[REDACTED] Brett	12111	360.00	08/19/88	-90.00
SE	KETN	[REDACTED] Tommy A.	11199	225.00	12/22/88	135.00
SE	KETN	[REDACTED] William	92436	270.00	12/22/88	0.00
SE	KETN	[REDACTED] Edwin	159621	185.00	12/22/88	40.00
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SE	KETN			6880.00		1483.00
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SE	SITK	[REDACTED] Stephen	151704	180.00	11/23/88	0.00
SE	SITK	[REDACTED] Gary R.	171012	45.00	08/19/88	0.00
SE	SITK	[REDACTED] Kathryn A.	171009	45.00	08/19/88	0.00
SE	SITK	[REDACTED] Carl R.	177192	135.00	11/03/88	0.00
SE	SITK	[REDACTED] Jeffrey	57591	135.00	10/31/88	0.00
SE	SITK	[REDACTED] Tom S.	120999	90.00	12/22/88	0.00
SE	SITK	[REDACTED] Theodore	164685	135.00	09/28/88	45.00
SE	SITK	[REDACTED] Bart L.	164265	135.00	10/31/88	45.00
SE	SITK	[REDACTED] Terri	117720	90.00	10/31/88	90.00
SE	SITK	[REDACTED] Richard	12108	180.00	09/28/88	0.00
SE	SITK	[REDACTED] Randall	158769	180.00	11/23/88	0.00
SE	SITK	[REDACTED] Lauren	151701	45.00	10/31/88	0.00
SE	SITK	[REDACTED] David C., Jr.	147318	180.00	12/22/88	45.00
SE	SITK	[REDACTED] Kenda	117051	225.00	10/31/88	90.00
SE	SITK	[REDACTED] James Craig	86814	90.00	11/23/88	0.00
SE	SITK	[REDACTED] Lane B.	169857	270.00	12/22/88	0.00
SE	SITK	[REDACTED] Elizabeth	153972	135.00	12/22/88	0.00
SE	SITK	[REDACTED] John	119220	225.00	12/22/88	0.00
SE	SITK	[REDACTED] Ron	144024	225.00	11/23/88	0.00
SE	SITK	[REDACTED] Mitchell	147474	360.00	10/31/88	135.00
SE	SITK	[REDACTED] Eric	164268	45.00	12/22/88	0.00
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SE	SITK			3150.00		450.00
				-----		-----
				-----		-----
SE				16995.50		4031.00
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				=====		=====
				82683.54		12691.54
				=====		=====

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158

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

February 24, 1989

The Honorable Jan Faiks
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Dear Senator Faiks:

A bill to update Alaska's controlled substances schedule, SB 158, has been referred to the Judiciary Committee for consideration. As reflected on page 5, line 13, one of the substances being added to the controlled substances schedule is propylhexedrine.

We have recently been contacted by a representative of SmithKline Consumer Products, a company that manufactures a product called the "Benzedrex inhaler." This inhaler is a nasal decongestant that has propylhexedrine as its active ingredient. The manufacturer's representative brought to our attention a final rule that was published by the Drug Enforcement Administration on January 19, 1989. The rule specifically excludes the Benzedrex inhaler from the provisions of the federal Controlled Substances Act. A copy of the rule is attached for your information.

As a result of the DEA's final rule, the Benzedrex inhaler is not a controlled substance and can be sold over the counter in the United States. The product is not subject to prescription requirements or other regulatory controls applicable to controlled substances.

Since the purpose of SB 158 is to conform Alaska's controlled substances schedule to the requirements of federal law, we believe language should be added to the bill to exempt propylhexedrine in a Benzedrex inhaler. Therefore, we suggest the following amendment:

Page 5, Line 13: Insert after the word "propylhexedrine"

",except when contained in a Benzedrex inhaler"

The Honorable Jan Faiks

February 24, 1989
Page 2

If you have any questions about the proposed amendment,
or about SB 158, please let me know.

Very truly yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
Laurie H. Otto
Assistant Attorney General

Attachment

cc: Gayle Horetski, Deputy Commissioner
Department of Public Safety
Bob Evans, Office of the Governor
Robert T. Angarola

LHO:me-11

Dated: January 11, 1989.

Gene R. Haislip,
 Deputy Assistant Administrator, Office of
 Diversion Control, Drug Enforcement
 Administration.
 [FR Doc. 89-1239 Filed 1-18-89; 8:45 am]
 BILLING CODE 4410-09-M

DATES: Effective February 21, 1989. Comments or objections may be submitted on or before March 20, 1989.
ADDRESS: Comments or objections should be submitted in quintuplicate to: Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537. Attn: DEA Federal Register Representative.
FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537. Telephone: (202) 633-1366 (FTS 833-1366).

SUPPLEMENTARY INFORMATION: The Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*) at 21 U.S.C 811(g)(1) requires that the Attorney General exclude any nonnarcotic substance from a schedule if such substance may, under the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 301 *et seq.*), be lawfully sold over the counter without a prescription. The Bazedrex Inhaler, NDC #49692-0928, meets the criteria for such an exclusion. The Bazedrex Inhaler contains propylhexedrine, a Schedule V nonnarcotic controlled substance as an active medicinal ingredient. The inhaler is permitted, under the FD&C Act, to be sold over the counter without a prescription. In accordance with 21 CFR 1308.21, the sponsor of the product, SmithKline Consumer Products, has applied to the Administrator of the Drug Enforcement Administration (DEA) for exclusion of the product from the provisions of the CSA pursuant to 21 U.S.C. 811(g)(1). The application has been received by the Deputy Assistant Administrator, Office of Diversion Control.

The Deputy Assistant Administrator finds that the product meets the criteria for exclusion from the CSA in accordance with 21 U.S.C. 811(g)(1). Any interested person may file written comments on or objections to this order on or before March 20, 1989. If any such comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which the order is based, the Deputy Assistant Administrator shall immediately suspend the effectiveness of this order until he may reconsider the application

in light of the comments and objections filed. Thereafter the Deputy Assistant Administrator shall reinstate, revoke, or amend his original order as he determines appropriate.

The Deputy Assistant Administrator hereby certifies that this matter will have no significant impact upon small businesses or other entities within the meaning the intent of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

The addition of a product to the list of excluded nonnarcotic over-the-counter substances has the effect of removing it from the CSA and the implementing regulations.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Office of Management and Budget has determined that these changes are internal agency matters which do not require formal review by that agency.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by 21 U.S.C. 811(g)(1) and delegated to the Administrator of DEA by Department of Justice Regulations (28 CFR 0.100), and redelegated to the Deputy Assistant Administrator of DEA, Office of Diversion Control by 28 CFR 0.104, the Deputy Assistant Administrator hereby amends 21 CFR Part 1308 as set forth below.

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Section 1308.22 is amended by adding to the table, in the appropriate alphabetical order, the product listed below.

§ 1308.22 Excluded Substances.

* * * * *

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Excluded Nonnarcotic Over-the-Counter Substances

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This rule excludes the Bazedrex Inhaler from the provisions of the Controlled Substances Act, since the product meets the statutory definition of an excluded product.

EXCLUDED NONNARCOTIC OVER-THE-COUNTER SUBSTANCES

Trade name or designation	Dosage form	Composition	Potency	Manufacturer or distributor
Bazedrex Inhaler	Inhaler	Propylhexedrine	250.00 mg	SmithKline Consumer Products

go0979sE
Chenoweth
3/8/89

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS SENATE BILL NO. 158 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act amending schedules IA - VA of the controlled
7 substance law and the definition of 'imitation con-
8 trolled substance.'"

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

10 * Section 1. AS 11.71.140(b)(1) is amended to read:

11 (1) opium and opiate, and any salt, compound, derivative,
12 or preparation of opium or opiate, excluding apomorphine, dextrorphan,
13 nalbuphine, nalmefene, naloxone, and naltrexone, and their respective
14 salts, but including the following:

- 15 (A) raw opium;
16 (B) opium extracts;
17 (C) opium fluid extracts;
18 (D) powdered opium;
19 (E) granulated opium;
20 (F) tincture of opium;
21 (G) codeine;
22 (H) ethylmorphine;
23 (I) etorphine hydrochloride;
24 (J) hydrocodone;
25 (K) hydromorphone;
26 (L) metopon;
27 (M) morphine;
28 (N) oxycodone;
29 (O) oxymorphone;

1 (P) thebaine;

2 * Sec. 2. AS 11.71.140(c) is amended by adding new paragraphs to read:

3 (66) alfentanil;

4 (67) alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-
5 (N-propanilido) piperidine);

6 (68) bulk dextropropoxyphene (non-dosage form);

7 (69) carfentanil;

8 (70) sufentanil;

9 (71) tilidine;

10 (72) para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);

11 (73) 3-methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);

12 (74) acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

13 (75) alpha-methylthiofentanyl (N-[1-(1-methyl-2-(2-thienyl)ethyl)-4-piperidinyl]-N-phenylpropanamide);

14 (76) beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);

15 (77) beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);

16 (78) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl)-4-piperidinyl]-N-phenylpropanamide);

17 (79) thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);

18 (80) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

19 (81) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine).

20 * Sec. 3. AS 11.71.150(b) is amended by adding a new paragraph to read:

1 (20) 3,4-methylenedioxymethamphetamine (MDMA).

2 * Sec. 4. AS 11.71.150(e) is amended to read:

3 (e) Schedule IIA includes, unless specifically excepted or
4 unless listed in another schedule, any material, compound, mixture, or
5 preparation which contains any quantity of the following substances
6 having a stimulant effect on the nervous system:

7 (1) amphetamine, its salts, optical isomers, and salts of
8 its optical isomers;

9 (2) methamphetamine, its salts, isomers, and salts of its
10 isomers;

11 (3) methylphenidate;

12 (4) phenmetrazine and its salts;

13 (5) fenethylamine;

14 (6) N-ethylamphetamine;

15 (7) 3,4-methylenedioxy-N-ethylamphetamine, also known as
16 N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA,
17 MDE, and MDEA;

18 (8) N-hydroxy-3,4-methylenedioxyamphetamine, also known as
19 N-hydroxy-alpha-methyl-3,4-(methylenedioxy)phenethylamine, and N-
20 hydroxy MDA;

21 (9) 4-methylaminorex, also known as 2-amino-4-methyl-5-
22 phenyl-2-oxazoline;

23 (10) N,N-dimethylamphetamine, also known as N,N,alpha-trime-
24 thylybenzencethaneamine or N,N,alpha-trimethylphenethylamine, its salts,
25 optical isomers, and salts of optical isomers.

26 * Sec. 5. AS 11.71.160(c) is amended by adding a new paragraph to read:

27 (12) tiletamine and zolazepam, or any of their salts.

28 * Sec. 6. AS 11.71.160(f) is amended by adding new paragraphs to read:

29 (4) parahexyl;

1 (5) dronabinol (synthetic) in sesame oil and encapsulated
2 in a soft gelatin capsule in a U.S. Food and Drug Administration
3 approved drug product;

4 (6) nabilone.

5 * Sec. 7. AS 11.71.170(b) is amended by adding new paragraphs to read:

6 (21) alprazolam;

7 (22) halazepam;

8 (23) temazepam;

9 (24) triazolam;

10 (25) midazolam;

11 (26) quazepam.

12 * Sec. 8. AS 11.71.170(d) is amended to read:

13 (d) Schedule IVA includes, unless specifically excepted or
14 unless listed in another schedule, any material, compound, mixture, or
15 preparation which contains any quantity of the following substances
16 having a stimulant effect on the central nervous system, including
17 their salts, isomers whether optical, position, or geometric, and
18 salts of these isomers whenever the existence of these salts, isomers,
19 and salts of isomers is possible within the specific chemical designa-
20 tion:

21 (1) diethylpropion;

22 (2) phentermine;

23 (3) pemoline, including organometallic complexes and che-
24 lates of this substance;

25 (4) mazindol;

26 (5) pipradol;

27 (6) SPA ((-)-1-dimethylamino-1,2-diphenylethane);

28 (7) cathine;

29 (8) fencamfamin;

1 (9) fenproporex;

2 (10) mefenorex.

3 * Sec. 9. AS 11.71.180 is amended by adding new subsections to read:

4 (d) Schedule VA includes, unless specifically excepted or unless
5 listed in another schedule, any material, compound, mixture or prepa-
6 ration that contains any quantity of the narcotic drug buprenorphine
7 and its salts.

8 (e) Schedule VA includes, unless specifically excepted or unless
9 listed in another schedule, any material, compound, mixture, or
10 preparation which contains any quantity of the following substances
11 having a stimulant effect on the central nervous system, including its
12 salts, isomers and salts of isomers:

13 (1) propylhexedrine, except when contained in a Benzedrex
14 inhaler;

15 (2) pyrovalerone.

16 * Sec. 10. AS 11.73.099(3) is amended to read:

17 (3) "imitation controlled substance" means a substance
18 containing ephedrine, ephedrine sulfate, pseudoephedrine, pseudo-
19 ephedrine hydrochloride, phenylpropanolamine, caffeine, theophylline,
20 lidocaine, procaine, tetracaine, dyclonine, acetaminophen, salicyla-
21 mide, doxylamine, diphenhydramine, pheniramine, chlorpheniramine, or
22 pryilamine, or their salts, that is not a controlled substance, and
23 that by dosage unit appearance (including color, shape, size, and
24 markings) and [OR] by representations would lead a reasonable person
25 to believe that the substance is a controlled substance; the term
26 "representations", as used in this paragraph, includes

27 (A) statements made by an owner or by anyone else in
28 control of the substance concerning the nature of the substance,
29 or its use or effect;

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(B) statements made to the recipient that the substance may be resold for inordinate profit;

(C) whether the substance is packaged in a manner normally used for controlled substances;

(D) evasive tactics or actions used by the owner or person in control of the substance to avoid detection by law enforcement authorities;

(E) the storage, packaging, presentation, display of, or reference to a controlled substance with, near, or in connection with the activity involving the imitation controlled substance.

* Sec. 11. AS 11.71.160(b)(4) is repealed.

Original sponsor(s): Rules/Governor

BY THE JUDICIARY COMMITTEE

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 158 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act amending schedules IA - VA of the controlled
7 substance law and the definition of 'imitation con-
8 trolled substance.'"

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

10 * Section 1. AS 11.71.140(b)(1) is amended to read:

11 (1) opium and opiate, and any salt, compound, derivative,
12 or preparation of opium or opiate, excluding apomorphine, dextrorphan,
13 nalbuphine, nalmefene, naloxone, and naltrexone, and their respective
14 salts, but including the following:

- 15 (A) raw opium;
16 (B) opium extracts;
17 (C) opium fluid extracts;
18 (D) powdered opium;
19 (E) granulated opium;
20 (F) tincture of opium;
21 (G) codeine;
22 (H) ethylmorphine;
23 (I) etorphine hydrochloride;
24 (J) hydrocodone;
25 (K) hydromorphone;
26 (L) metopon;
27 (M) morphine;
28 (N) oxycodone;
29 (O) oxymorphone;

1 (P) thebaine;

2 * Sec. 2. AS 11.71.140(c) is amended by adding new paragraphs to read:

3 (66) alfentanil;

4 (67) alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)-
5 ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4(N-pro-
6 panilido) piperidine);

7 (68) bulk dextropropoxyphene (non-dosage form);

8 (69) carfentanil;

9 (70) sufentanil;

10 (71) tilidine;

11 (72) para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phen-
12 ethyl)-4-piperidinyl] propanamide);

13 (73) 3-methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-pi-
14 peridyl]-N-phenylpropanamide);

15 (74) acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phene-
16 tnyl-4-piperidinyl]-N-phenylacetamide);

17 (75) alpha-methylthiofentanyl (N-[1-(1-methyl-2-(2-thienyl)
18 ethyl-4-piperidinyl]-N-phenylpropanamide);

19 (76) beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-
20 piperidinyl]-N-phenylpropanamide);

21 (77) beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-
22 phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);

23 (78) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-
24 4-piperidinyl]-N-phenylpropanamide);

25 (79) thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperi-
26 dinyl]-propanamide);

27 (80) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

28 (81) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine).

29 * Sec. 3. AS 11.71.150(b)(17) is amended to read:

1 (17) analogs of phencyclidine (PCP), including:

2 (A) ethylamine analog, also known by some trade or
3 other names as follows: N-ethyl-1-phenylcyclohexylamine (1-
4 phenylcyclohexyl)-ethylamine, N-(1-phenylcyclohexyl)ethylamine,
5 cyclohexamine, PCE;

6 (B) pyrrolidine analog, also known by some trade or
7 other names as follows: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPY,
8 PHP;

9 (C) thiophene analog, also known as 1-[1-(2-thienyl)
10 cyclohexyl]piperidine and 2-thienyl analog of phencyclidine, TPCP,
11 and TCP;

12 (D) 1-[1-(2-thienyl)-cyclohexyl]-pyrrolidine, also
13 known as TCPy;

14 * Sec. 4. AS 11.71.150(b) is amended by adding a new paragraph to read:

15 (20) 3,4-methylenedioxymethamphetamine (MDMA).

16 * Sec. 5. AS 11.71.150(e) is amended to read:

17 (e) Schedule IIA includes, unless specifically excepted or
18 unless listed in another schedule, any material, compound, mixture, or
19 preparation which contains any quantity of the following substances
20 having a stimulant effect on the nervous system:

21 (1) amphetamine, its salts, optical isomers, and salts of
22 its optical isomers;

23 (2) methamphetamine, its salts, isomers, and salts of its
24 isomers;

25 (3) methylphenidate;

26 (4) phenmetrazine and its salts;

27 (5) fenethylamine;

28 (6) N-ethylamphetamine;

29 (7) 3,4-methylenedioxy-N-ethylamphetamine, also known as

1 N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA,
2 MDE, and MDEA;

3 (8) N-hydroxy-3,4-methylenedioxyamphetamine, also known as
4 N-hydroxy-alpha-methyl-3,4-(methylenedioxy)phenethylamine, and N-
5 hydroxy MDA;

6 (9) 4-methylaminorex, also known as 2-amino-4-methyl-5-
7 phenyl-2-oxazoline;

8 (10) N,N-dimethylamphetamine, also known as N,N,alpha-trime-
9 thylybenzencethaneamine or N,N,alpha-trimethylphenethylamine, its salts,
10 optical isomers, and salts of optical isomers.

11 * Sec. 6. AS 11.71.160(c) is amended by adding a new paragraph to read:
12 (12) tiletamine and zolazepam, or any of their salts.

13 * Sec. 7. AS 11.71.160(f) is amended to read:

14 (f) Schedule IIIA includes

15 (1) hashish;

16 (2) hash oil or hashish oil; [AND]

17 (3) tetrahydrocannabinols;

18 (4) parahexyl;

19 (5) dronabinol (synthetic) in sesame oil and encapsulated
20 in a soft gelatin capsule in a U.S. Food and Drug Administration
21 approved drug product; and

22 (6) nabilone.

23 * Sec. 8. AS 11.71.170(b) is amended by adding new paragraphs to read:

24 (21) alprazolam;

25 (22) halazepam;

26 (23) temazepam;

27 (24) triazolam;

28 (25) midazolam;

29 (26) quazepam.

1 * Sec. 9. AS 11.71.170(d) is amended to read:

2 (d) Schedule IVA includes, unless specifically excepted or
3 unless listed in another schedule, any material, compound, mixture, or
4 preparation which contains any quantity of the following substances
5 having a stimulant effect on the central nervous system, including
6 their salts, isomers whether optical, position, or geometric, and
7 salts of these isomers whenever the existence of these salts, isomers,
8 and salts of isomers is possible within the specific chemical designa-
9 tion:

10 (1) diethylpropion;

11 (2) phentermine;

12 (3) pemoline, including organometallic complexes and che-
13 lates of this substance;

14 (4) mazindol;

15 (5) pipradol;

16 (6) SPA ((-)-1-dimethylamino-1,2-diphenylethane);

17 (7) cathine;

18 (8) fencamfamin;

19 (9) fenproporex;

20 (10) mefenorex.

21 * Sec. 10. AS 11.71.180 is amended by adding new subsections to read:

22 (d) Schedule VA includes, unless specifically excepted or unless
23 listed in another schedule, any material, compound, mixture or prepa-
24 ration that contains any quantity of the narcotic drug buprenorphine
25 and its salts.

26 (e) Schedule VA includes, unless specifically excepted or unless
27 listed in another schedule, any material, compound, mixture, or
28 preparation which contains any quantity of the following substances
29 having a stimulant effect on the central nervous system, including its

1 salts, isomers and salts of isomers:

2 (1) propylhexedrine, except when contained in a Benzedrex
3 inhaler;

4 (2) pyrovalerone.

5 * Sec. 11. AS 11.73.099(3) is amended to read:

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

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

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

21 (C) whether the substance is packaged in a manner
22 normally used for controlled substances;

23 (D) evasive tactics or actions used by the owner or
24 person in control of the substance to avoid detection by law
25 enforcement authorities;

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

1 * Sec. 12. AS 11.71.160(b)(4) is repealed.
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STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

November 20, 1989

RECEIVED

DEC 01 1989

JAN FAIKS
SENATE OFFICE

The Honorable Jan Faiks
Alaska State Senator
P.O. Box V
Juneau, Alaska 99811

Re: SB 158 - Controlled
Substances Schedule

Dear Senator Faiks:

As you know, the Criminal Division of the Department of Law, and the Department of Public Safety, strongly support SB 158, a bill which updates the controlled substances schedules in AS 11.71. The purpose of the bill is to criminalize the possession and sale of designer drugs, such as "Ecstasy", which are illegal under federal law but are legal under state law. We are hoping that SB 158 will pass out of Senate Judiciary in an expeditious manner in order to improve the bill's chances for passage this session.

In the past year, one new drug has been added to the federal controlled substances schedule. The drug is a hallucinogen, similar to PCP and TCP, and is called "1-[1-(2-thienyl)-cyclohexyl]-pyrrolidine" or "TCPy". We believe that TCPy should be criminalized, and suggest the following amendment to SB 158:

Page 3, following line 1:

Add a new section 4 and renumber the subsequent sections accordingly.

*Sec. 4. AS 11.71.150(b)(17) is amended by adding a new subparagraph to read:

(D) 1 -[1-(2-thienyl)-cyclohexyl]-pyrrolidine, also known as TCPy;

The Honorable Jan Faiks

November 20, 1989
Page 2

Thank you in advance for any assistance you are able to provide in securing passage of SB 158.

Very truly yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 

Laurie H. Otto
Assistant Attorney General

cc: Gayle Horetski



158

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 3, 1989

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, and in accordance with AS 11.71.120(b), I am transmitting a bill that amends Alaska's laws regarding controlled substances and imitation controlled substances. Passage of this bill will improve our ability to combat the problems of drug abuse in Alaska.

Alaska's present controlled substance laws were adopted in 1982. The lists of substances covered by the present laws were modelled after the lists contained in the 1979 Federal Controlled Substances Act. Several new drugs have been added to the federal schedule, but have not been added to the Alaska schedule. Thus, Alaska has no way of maintaining legal control over the sales or distribution of these drugs, recently scheduled under federal law. This bill amends the existing controlled substance schedules to conform to the federal schedules, ensuring that state law enforcement authorities will have the legal tools necessary to combat illicit trafficking in dangerous drugs.

A section-by-section analysis of the bill, explaining in detail the effect of and reasons for the proposed changes, appears below. In brief summary, secs. 2 -- 9 amend the controlled substance schedules to add substances that are controlled under federal law, but not under Alaska's law. The bill adds 42 substances to the Alaska schedules: 16 to schedule IA, seven to schedule IIA, four to schedule IIIA, 12 to schedule IVA, and three to schedule VA. The bill also reschedules one substance that has been rescheduled under the federal law, and removes from control one substance that has been removed from the federal schedule. The drug scheduling criteria set out in AS 11.71.120(c) were used to determine the appropriate level of scheduling for each substance. The section-by-section analysis below explains in detail what drugs will be added to the schedules, and why. Section 10 proposes a minor amendment

that clears a problem of vagueness in the definition of "imitation controlled substance."

SECTION-BY-SECTION ANALYSIS OF BILL

Note: Unless otherwise indicated, the descriptions of the drugs listed below are based upon materials supplied by the federal Drug Enforcement Administration (DEA).

Section 1:

This section removes the substance nalmeferne from Alaska's Controlled Substances Act by adding it to the list of exclusions in AS 11.71.140(b)(1). Currently, nalmeferne is included in schedule IA (AS 11.71.140) because it is a derivative of the listed opiod thebaine. Nalmeferne is also a derivative of the narcotic antagonist na¹+rexone, currently excepted from the state Controlled Substances Act. The DEA and the Secretary of the U.S. Department of Health and Human Services have concluded that there is insufficient scientific evidence to demonstrate that nalmeferne possesses sufficient potential for abuse to justify its continued control in any schedule of the federal Controlled Substances Act.

Section 2:

This section adds 16 narcotic substances to schedule IA: alfentanil; alpha-methylfentanyl; bulk dextropropoxyphene; carfentanil; sufentanil; tilidine; para-fluorofentanyl; 3-methylfentanyl; acetyl-alpha-methylfentanyl; alpha-methylthiofentanyl; beta-hydroxyfentanyl; beta-hydroxy-3-methylfentanyl; 3-methylthiofentanyl; thiofentanyl; MPPP; and PEPAP.

Alfentanil was placed in federal schedule I in accordance with U.S. treaty obligations under the Single Convention on Narcotic Drugs. At the request of the World Health Organization, alfentanil was examined by various groups from the Committee of Problems of Drug Dependence. The results of the study showed that alfentanil is a potent morphine-like compound with two to four times the potency of morphine when used as an analgesic.

Alpha-methylfentanyl, also known as "China White" or synthetic heroin, is a close structural analog of the Alaska schedule IA substance fentanyl. It is an analgesic approximately 80 times more potent than morphine. The substance has been placed in federal schedule I because it has a high potential for abuse and currently has no accepted use in medical treatment in the United States.

Bulk dextropropoxyphene (non-dosage form) is a federal schedule II opiate. The scheduling criteria used in Alaska require that all federal schedule I and II narcotics be

placed in Alaska's schedule IA. This substance, therefore, is placed in schedule IA. It should be noted that dextropropoxyphene in dosage form is placed in Alaska's schedule IVA and federal schedule IV. Dextropropoxyphene in dosage form is better known as the drug "Darvon." Non-dosage form was placed in federal schedule II in accordance with U.S. treaty obligations under the Single Convention on Narcotic Drugs.

Carfentanil is a narcotic substance approved by the Food and Drug Administration for marketing as a new animal drug. Carfentanil is an opiate, as defined in 21 U.S.C. 802(18), because it has an addiction-forming and addiction-sustaining ability similar to morphine. Because it has been approved for marketing, it has been placed in federal schedule II. However, because it is a narcotic substance, carfentanil is being placed in Alaska's schedule IA.

Sufentanil is contained in the federal schedule II; it is a congener of the federal schedule II narcotic substance fentanyl. Sufentanil is indistinguishable in terms of abuse potential from fentanyl, a drug used mainly in operating rooms and abused primarily by operating room personnel.

Tilidine, also known as tilidate hydrochloride, is a narcotic analgesic used in the control of moderate or severe pain. Tilidine was placed in federal schedule I in accordance with U.S. treaty obligations under the Single Convention on Narcotic Drugs.

Para-fluorofentanyl, 3-methylfentanyl, acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl, and thiofentanyl are potent analogs of the synthetic narcotic analgesic fentanyl. Each of these fentanyl analogs behaves as a typical morphinelike compound in rodent antinociceptive tests. Each analog substitutes completely for morphine when administered to morphine-dependent withdrawn monkeys. These analogs have been produced in clandestine laboratories, identified in drug evidence submissions, and associated with a number of overdose deaths.

MPPP and PEPAP are potent analogs of meperidine, a synthetic narcotic analgesic. Produced in clandestine laboratories, MPPP and PEPAP have been identified in illicit drug trafficking. MPPP in particular has been associated with drug-induced Parkinson's disease in a number of users.

Section 3:

This section would add 3,4-methylenedioxymethamphetamine (MDMA) to AS 11.71.150(b), to place it in schedule IIA.

MDMA, the designer drug known as Ecstasy, is an analog of the substance "methamphetamine." It has a high potential for abuse and currently has no accepted medical use in the United States. It is a federal schedule I drug, but because it is a non-narcotic hallucinogenic it has been placed in Alaska schedule IIA.

Section 4:

This section would add six new substances to schedule IIA (AS 11.71.150): fenethylline; N-ethylamphetamine; 3,4-methylenedioxy-N-ethylamphetamine; N-hydroxy-3,4-methylenedioxyamphetamine; 4-methylaminorex and N,N-dimethylamphetamine.

Fenethylline is a conjugate of amphetamine and theophyllin (a methylxanthine). The drug produces a delayed, but prolonged, central nervous system stimulatory effect. Fenethylline has a high potential for abuse, has no recognized medical use in the United States, and has not been tested to determine its safety for use under medical supervision. It is a federal schedule I drug, but it has been placed in Alaska's schedule IIA because the drug is non-narcotic.

N-ethylamphetamine's pharmacological and behavioral effects are similar to those of amphetamine and methamphetamine. It is a federal schedule I substance with a high potential for abuse, and no known medical use in the United States. It has been placed in Alaska's schedule IIA because the drug is non-narcotic.

3,4-methylenedioxy-N-ethylamphetamine and N-hydroxy-3,4-methylenedioxyamphetamine are analogs of the schedule IIA substance methamphetamine (MDA). 4-methylaminorex has a pharmacological profile that closely resembles that of amphetamine; it has been described as a potent central nervous system stimulant.

Because N,N-dimethylamphetamine has no current accepted medical use, it has been placed in federal schedule I. N,N-dimethylamphetamine belongs to the chemical class of compounds known as phenylisopropylamines. Amphetamine and methamphetamine also belong to this class. N,N-dimethylamphetamine is very similar in molecular structure to amphetamine and methamphetamine and produces central nervous system stimulant effects. Because N,N-dimethylamphetamine is a non-narcotic stimulant, it is being placed in Alaska schedule IIA.

The federal 1984 Crime Control Act provided the Drug Enforcement Administration with emergency scheduling authority, to avoid an imminent hazard to the public safety. This scheduling procedure was established with the onset of the illicit manufacture and distribution of designer drugs. Federal law defines a designer drug as:

New chemical analogs or variations of existing controlled substances, or other new substances, which have a psychedelic, stimulant, depressant, or narcotic effect and have a high potential for abuse.

Scheduling under this authority is effective for one year and is not applicable to substances for which there is an exemption under the Federal Food, Drug, and Cosmetic Act (e.g., investigational new drugs and new drug applications). To classify a substance under its emergency powers, the DEA must publish a notice of the classification in the Federal Register; the classification becomes effective after 30 days. On October 30, 1987, 3,4-methylenedioxy-N-ethylamphetamine and N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex were scheduled in this manner. On October 14, 1988, a proposed rule was published to permanently schedule these three substances. It is anticipated that, by the time this legislation is being considered, a final rule scheduling these substances will have been signed.

On August 3, 1988, the administrator of DEA issued a final rule temporarily placing N,N-dimethylamphetamine into federal schedule I. According to DEA, a final rule permanently scheduling this substance will be published within the next several months.

Section 5:

This section places the substance "tiletamine and zolazepam" into schedule IIIA, by adding it to AS 11.71.-160(c). Tiletamine is a chemical analog of phencyclidine and has pharmacological properties similar to that substance. Zolazepam is a chemical analog of the schedule IVA benzodiazepines. As a combined substance it is used by veterinarians as a tranquilizer. This scheduling action facilitates the marketing of a veterinary pharmaceutical product and minimizes the likelihood of the product being abused.

Section 6:

This section places the following substances into AS 11.71.-160(f), to add them to schedule IIIA: parahexyl, dronabinol, and nabilone. Because these substances are THC analogs that are chemically and pharmacologically similar to THC, they have been placed in Alaska schedule IIIA.

Parahexyl is a synthetic analog of delta-9-tetrahydrocannabinol (THC). Parahexyl has no known medical use in the United States. It has been placed in federal schedule I.

Dronabinol (synthetic) in sesame oil and encapsulated in soft gelatin capsules in a Food and Drug Administration-approved drug product: Dronabinol is the synthetic equivalent of the isomer delta-9-tetrahydrocannabinol, the principal psychoactive substance in marijuana. Dronabinol is used to treat nausea and vomiting associated with cancer chemotherapy in patients who have failed to respond adequately to conventional antiemetic treatment.

Nabilone is a synthetic analog of delta-9-tetrahydrocannabinol (THC). It is used to treat nausea and vomiting associated with cancer chemotherapy. Nabilone has been placed in federal schedule II.

Section 7:

This section adds six benzodiazepines to schedule IVA (AS 11.71.170): alprazolam, halazepam, temazepam, triazolam, midazolam, and quazepam. Each substance is an anti-anxiety agent substantially similar to other benzodiazepines currently listed in Alaska's schedule IVA. All six substances have been classified into the federal schedule IV.

Section 8:

This section places the substance mazindol in schedule IVA (AS 11.71.170) (see sec. 11 description, below). Section 8 also adds six other substances to schedule IVA: pipradol, SPA, cathine, fencamfamin, fenproporex and mefenorex.

Pipradol is a mild central nervous system stimulant. Its effects resemble those of the amphetamines, but the usual therapeutic dose of pipradol results in less euphoria, anorexia, and insomnia. It is an effective anti-depressant without the extreme central nervous system stimulation found in the amphetamines.

SPA is a substance marketed in Japan. It exhibits the same properties as morphine and methamphetamine, but with analgesic effects. Results of a study conducted by the University of Michigan showed that SPA has no physical dependence capacity.

Cathine is scheduled in accordance with the 1971 Psychotropic Convention. It is a stimulant derived from the Khat plant and originates in the Middle East.

Fencamfamin, fenproporex, and mefenorex are also stimulants.

Cathine, fencamfamin, fenproporex, and mefenorex are scheduled in accordance with the 1971 Psychotropic Convention. During its February 1986 session, the United Nations Commission on Narcotic Drugs (CND) decided to include 17 phenethylamines in the schedules of the Convention on Psychotropic Substances. These substances are among the 17.

Section 9:

This section classifies the substance buprenorphine as a schedule VA drug by placing it in proposed AS 11.71.180(d). The DEA has placed buprenorphine into federal schedule V. It had previously been considered a federal schedule II drug because it is a derivative of the substance thebaine (a schedule IA narcotic in Alaska). The DEA has found that buprenorphine has a low potential for abuse, has a currently accepted medical use, and has limited potential for physical or psychological dependence.

This section also adds propylhexedrine and pyrovalerone to schedule VA by placing them in proposed AS 11.71.180(e).

Propylhexedrine and pyrovalerone are psychotropic substances. Currently pyrovalerone is neither manufactured nor distributed commercially in the United States. Propylhexedrine is marketed in the over-the-counter nasal decongestant inhalers.

These two substances are being scheduled in accordance with the 1971 Psychotropic Convention, and are among the 17 phenethylamines included in the schedules of the Convention on Psychotropic Substances by the United Nations Commission on Narcotic Drugs (CND) during its February 1986 session.

Section 10:

This section amends the language of existing AS 11.73.-099(3), which defines "imitation controlled substance." The minor amendment, substitution of "and" for "or," corrects an oversight in the imitation controlled substances law, which was enacted in 1983. The amendment changes the elements of the crime to require that a person actually make explicit or implied representations about the character of the substance. These representations and the item's appearance are facts that a judge or jury would con-

sider when deciding whether, under all the circumstances of the case, a reasonable person would have believed the substance to be controlled. The law as presently written is vague -- perfectly legal substances sold over a drug store counter might be similar in appearance to items that are manufactured and sold illicitly. A person should be able to legally possess these substances if the person has no intent to pass them as counterfeit substances.

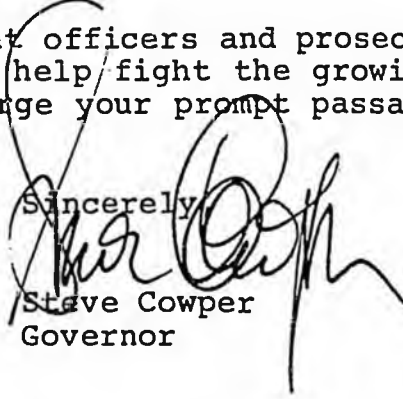
The Alaska Court of Appeals pointed out the vagueness in the current definition of "imitation controlled substance" in its recent decision in Morrow v. State, 704 P.2d 226, 232 (Ak. App. 1985). The court was not able to determine, under the facts in the record in that particular case, whether the defendant's conviction should be reversed; the appellate court remanded the case to the trial court for factual findings. Although the conviction in the Morrow case was not reversed, it is important to clarify the language of the definition -- both to ensure that the problem does not recur in the future and to give people fair notice of the types of conduct that are prohibited under the law.

Section 11:

This section removes the substance mazindol from Alaska's schedule IIIA (AS 11.71.160). Mazindol has been transferred to schedule IVA (AS 11.71.170) (see sec. 8, above). This change has been made because mazindol is an anorectic substance that has a lower potential for abuse than other schedule IIIA anorectics; it also presents less danger of psychological dependence relative to other anorectics in schedule IIIA.

To ensure that law enforcement officers and prosecutors have the necessary legal tools to help fight the growing problem of drug abuse in Alaska, I urge your prompt passage of this bill.

Sincerely,



Steve Cowper
Governor

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

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March 13, 1989

The Honorable Jan Faiks
Chair, Senate Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Re: SB 158
Controlled Substances

Dear Senator Faiks:

You asked for a brief description of the major differences between the Alaska statutes scheduling controlled substances and the federal drug schedules. The best source for this information is the commentary to the 1982 revision of Alaska's controlled substances laws. A chart comparing the two schedules is set out as Appendix D to the commentary, which is attached for your information.

Alaska's Controlled Substances Act implements a comprehensive statutory scheme to control the possession, use, sale, and distribution of licit and illicit drugs in the state through a logical classification and penalty structure. The primary purpose of our law is to provide a basis for criminal prosecutions. In contrast, the federal laws fulfill the additional function of regulating the sale and production of a wide range of substances intended for human consumption.

In summary, the differences between the federal and state laws are:

A. The federal law considers whether the substance has an accepted medical use; this criterion is not considered under Alaska law.

B. Alaska considers whether there is a relationship between the use of the substance and other criminal activity; this criterion is not considered under federal law. As a result, simple possession of cocaine and heroin is a felony in Alaska even though it is a misdemeanor under federal law. See 21 U.S.C. § 844.

C. The schedule labeling differs. The federal schedules are labeled I through V. Under Alaska law, the schedules are labeled IA through VIA. (The "A" was added to clearly differentiate between the federal and the Alaska schedules.)

D. Under Alaska law, all federal schedule I & II narcotics are classified as Schedule IA, and all federal schedule I & II non-narcotics are classified as Schedule IIA.

E. Marijuana was placed in a separate schedule labeled VIA, in accordance with constitutional constraints placed on the regulation of marijuana by the Alaska Supreme Court.

The general criteria for scheduling drugs in Alaska are set out below:

AS 11.71.120(c)

In advising the governor of the need to add, delete, or reschedule a substance under AS 11.71.110(1), the committee shall assess the danger or probable danger of the substance after considering the following:

- (1) the actual or probable abuse of the substance including
 - (A) the history and current pattern of abuse both in this state and in other states;
 - (B) the scope, duration, and significance of abuse;
 - (C) the degree of actual or probable detriment which may result from abuse of the substance;
 - (D) the probable physical and social impact of widespread abuse of the substance;
- (2) the biomedical hazard of the substance including
 - (A) its pharmacology, in the effects and modifiers of the effects of the substance;
 - (B) its toxicology, the acute and chronic toxicity, interaction with other substances, whether controlled or not, and the degree to which it may cause psychological or physiological dependence;
 - (C) the risk to public health and the particular susceptibility of segments of the population;
- (3) whether the substance is an immediate precursor of a substance already controlled under this chapter;
- (4) the current state of scientific knowledge regarding the substance, including whether there is any acceptable means to safely use the substance under medical supervision;
- (5) the relationship between the use of the substance and other criminal activity, including
 - (A) whether persons engaged in illicit trafficking of the substance are also engaged in other criminal activity;
 - (B) whether the nature and relative profitability of manufacturing or delivering the substance encourages illicit trafficking in the substance;
 - (C) whether the commission of other crimes is one of the effects of abuse of the substance;
 - (D) whether addiction to the substance relates to the commission of crimes to support the continued use of the substance.

It may be helpful to consider the following comparison of the specific factual findings that serve as the basis for drug scheduling under the state and federal controlled substances laws.

Federal Findings for Drug
Classification

State Findings for Drug
Classification

Schedule I

- A. The drug has a high potential for abuse;
- B. The drug has no currently accepted medical use in treatment in the United States; and
- C. The drug is not accepted as safe for use under medical supervision.

Schedule IA

Is found to have the highest degree of danger or probable danger to a person or the public under AS 11.71.120(c).

Schedule II

- A. The drug has a high potential for abuse;
- B. The drug has a currently accepted medical use in treatment in the United States; and
- C. Abuse may lead to severe psychological or physical dependence.

Schedule IIA

Is found under AS 11.71.120(c) to have a degree of danger or probable danger to a person or the public which is less than substances listed in schedule IA, but higher than substances listed in schedule IIIA.

Schedule III

- A. The drug has a potential for abuse less than the drugs in schedules I and II;
- B. The drug has a currently accepted medical use in treatment in the United States; and
- C. Abuse may lead to moderate or low physical dependence or high psychological dependence.

Schedule IIIA

Is found under AS 11.71.120(c) to have a degree of danger or probable danger to a person or the public less than the substances listed in schedule IIA but higher than substances listed in schedule IVA.

Schedule IV

- A. The drug has a low potential for abuse relative to the drugs in schedule III;
- B. The drug has a currently accepted medical use in treatment in the United States; and
- C. Abuse may lead to limited physical dependence or psychological dependence relative to the drugs in schedule III.

Schedule IVA

Is found under AS 11.71.120(c) to have a degree of danger or probable danger to a person or the public which is less than the substances listed in schedule IIIA, but higher than substances listed in schedule VA.

Schedule V

- A. The drug has a low potential for abuse relative to the drugs in schedule IV;
- B. The drug has a currently accepted medical use in treatment in the United States;
- C. Abuse may lead to limited physical dependence or psychological dependence relative to the drugs in schedule IV.

Schedule VA

Is found under AS 11.71.120(c) to have a degree of danger or probable danger to a person or the public which is less than substances listed in schedule IVA, but higher than substances listed in schedule VIA.

Schedule VIA

Is found under AS 11.71.120(c) to have the lowest degree of danger or probable danger to a person or the public.

The Honorable Jan Faiks

March 13, 1989
Page 4

I hope your questions about controlled substances scheduling in Alaska have been answered, and that the Senate Judiciary Committee is now in a position to pass judgment on SB 158. As you know, the bill was introduced pursuant to the legislative mandate set out in AS 11.71.120(b): "If a substance is added as a controlled substance under federal law, the governor shall introduce legislation in accordance with the federal law."

Very truly yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 

Laurie H. Otto
Assistant Attorney General

Attachment

cc: Gayle Horetski, Deputy Commissioner
Department of Public Safety
Bob Evans
Gwen Prewitt

3. Each offense is entitled Mis-
led Substance, with the degree of the offense
ating the relative seriousness of the prohibited
ct. The first degree crime is the most serious
se, while the seventh degree offense is the least
ous.

Each offense is classified within the structure
the revised criminal code. Sentencing will occur
rsuant to AS 12.55, with the presumptive sentencing pro-
visions of that chapter applying to eligible felony
offenders. Consequently, a judge's discretion in sentenc-
ing a defendant convicted of a felony drug offense who has
previously been convicted of any other felony offense will
be substantially restricted. This sentencing structure is
designed to provide emphasis on the more serious offenses
under the legislation, including the delivery of a con-
trolled substance to a minor and the commercial sale of
such substances as heroin, cocaine, LSD and amphetamines.

In addition to providing penalties for unlawful
acts involving controlled substances, the bill establishes
a closed regulatory system for legitimate handlers of con-
trolled substances to curtail drug diversion into illegit-
imate channels. This system requires, for example, regis-
tration, maintenance of records, and the use of uniform
order forms. Compliance with federal requirements satis-
fies state law, so that pharmacists, doctors, researchers
and manufacturers of controlled substances are not sub-

in Ravin v. State, 537 P.2d 494 (Alaska 1975), which held that the state constitutional right to privacy protects the possession and use of marijuana, by an adult, for personal use in the home in a non-commercial context.

While recognizing the constitutional right to privacy, this legislation, at the same time, recognizes that marijuana poses a serious threat to the public health, particularly in cases involving the use of marijuana by minors. In approving this Act, the legislature does not intend in any way to condone or encourage the possession, use or delivery of marijuana by any person in Alaska.

Section 2. AS 11.71. CONTROLLED SUBSTANCES.

Secs. 11.71.010--11.71.900 add a new chapter to the revised criminal code containing articles which define prohibited conduct involving controlled substances, establish the Controlled Substances Advisory Committee, classify controlled substances into six schedules and define terms used throughout the chapter.

ARTICLE 1. OFFENSES RELATING TO CONTROLLED SUBSTANCES

This article defines the seven offenses involving controlled substances. Each offense is classified under the general classification scheme applicable to the revised criminal code. See AS 11.81.250, Classification of Offenses. The penalties for each offense are specified

For all offenses involving the "delivery" (defined in sec. 11.71.900(6)) of a controlled substance to a minor (secs. 11.71.010(a)(1); 11.71.010(a)(2); and 11.71.030(a)(2)), the ages of both the defendant and the minor are of importance. The minor must be under 19 and the defendant must be at least three years older than the minor. The purpose of this age differential is to prevent the imposition of aggravated penalties in a case, where, for example, a 19-year-old shares a controlled substance with a 17-year-old friend. Statutes in several other states, as well as the Uniform Controlled Substances Act, contain a similar three-year age difference requirement. The cut-off age of 19 for offenses involving minors receiving or possessing controlled substances has been selected in order to be consistent with laws involving alcohol in Title 04. One exception to the differentiation between minors and adults at age 19 is the provision where a person 18 or older who possesses a controlled substance on school grounds can be prosecuted and convicted of an aggravated possession offense. See secs. 11.71.030(a)(3); 11.71.040(a)(4).

As previously noted, no culpable mental state is specified in sec. 11.71.010(a)(1) and (a)(2) with respect to the age of the minor. It is the intent of the legislature, consistent with AS 11.81.610(b)(2), that a defendant must act "recklessly" as to the age of the minor in order to be convicted under these subsections. There are sev-

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

COMMENTARY AND SECTIONAL ANALYSIS FOR THE
1982 REVISION OF ALASKA'S CONTROLLED
SUBSTANCES LAWS

CONFERENCE COMMITTEE SUBSTITUTE FOR SENATE BILL No. 190

INTRODUCTION

This legislation implements a comprehensive statutory scheme to control the possession, use, sale, and distribution of licit and illicit drugs in the state through a logical classification and penalty scheme consistent with the revised criminal code which took effect on January 1, 1980.

The legislation is patterned after the federal Controlled Substances Act of 1970 (P.L. 91-513) and the Uniform Controlled Substances Act, adopted by the National Conference of Commissioners on Uniform State Laws. It is designed to provide for relative uniformity among the laws of the states and the federal government. The federal and uniform acts have served as models for 44 states which have revised their outdated drug laws over the last decade.

The main objective and advantage of the uniform act and of this legislation is to create a single coordinated statutory system of drug control similar to that now in effect at the federal level and in most other states.

The legislation establishes seven degrees of offenses involving controlled substances in chapter 71 of the revised criminal code, Title 11 of the Alaska

3. Each offense is entitled Miscellaneous, with the degree of the offense indicating the relative seriousness of the prohibited act. The first degree crime is the most serious offense, while the seventh degree offense is the least serious.

Each offense is classified within the structure of the revised criminal code. Sentencing will occur pursuant to AS 12.55, with the presumptive sentencing provisions of that chapter applying to eligible felony offenders. Consequently, a judge's discretion in sentencing a defendant convicted of a felony drug offense who has previously been convicted of any other felony offense will be substantially restricted. This sentencing structure is designed to provide emphasis on the more serious offenses under the legislation, including the delivery of a controlled substance to a minor and the commercial sale of such substances as heroin, cocaine, LSD and amphetamines.

In addition to providing penalties for unlawful acts involving controlled substances, the bill establishes a closed regulatory system for legitimate handlers of controlled substances to curtail drug diversion into illegitimate channels. This system requires, for example, registration, maintenance of records, and the use of uniform order forms. Compliance with federal requirements satisfies state law, so that pharmacists, doctors, researchers and manufacturers of controlled substances are not sub-

jected to conflicting state and federal requirements pertaining to registration, recordkeeping, order forms, and prescriptions.

COMMENTARY AND SECTIONAL ANALYSIS

Section 1. DECLARATION OF LEGISLATIVE PURPOSE.

This section states the purpose of the comprehensive revision of Alaska's drug laws and highlights the two concerns that are addressed in the legislation. The purpose of the revision is the enactment of legislation patterned after federal law and the uniform act containing penalty provisions in conformity with the revised criminal code in order to effectively combat illicit trafficking in controlled substances. The legislation addresses both public safety and public health concerns associated with controlled substances. The revisions to Title 11 address public safety concerns by providing penalties for unlawful acts involving controlled substances, while the revisions to Title 17 address public health concerns by regulating the legitimate handling of controlled substances to prevent diversion of drugs to illicit channels.

This legislation is intended to strike a balance between the sometimes conflicting provisions of the state constitutional right to privacy (Art. I, Sec. 22) and the need to protect the public health. In striking this balance, the legislation addresses the enforcement ambiguities created by the decision of the Alaska Supreme Court

in Ravin v. State, 537 P.2d 494 (Alaska 1975), which held that the state constitutional right to privacy protects the possession and use of marijuana, by an adult, for personal use in the home in a non-commercial context.

While recognizing the constitutional right to privacy, this legislation, at the same time, recognizes that marijuana poses a serious threat to the public health, particularly in cases involving the use of marijuana by minors. In approving this Act, the legislature does not intend in any way to condone or encourage the possession, use or delivery of marijuana by any person in Alaska.

Section 2. AS 11.71. CONTROLLED SUBSTANCES.

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This article defines the seven offenses involving controlled substances. Each offense is classified under the general classification scheme applicable to the revised criminal code. See AS 11.81.250, Classification of Offenses. The penalties for each offense are specified

in AS 12.55. A chart showing the classification and penalty for each offense appears as APPENDIX A. The general provisions of the revised criminal code, including the rules on culpability, are also applicable to these crimes.

It should also be noted that each of the seven offenses provides in the introductory clause in subsection (a), that if the otherwise prohibited conduct is authorized by AS 17.30 or AS 17.35, an offense has not occurred. Those chapters regulate the legitimate handling of controlled substances by persons such as manufacturers and pharmacists.

Sec. 11.71.010. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE FIRST DEGREE.

This crime defines the most serious conduct prohibited by this legislation. The offense is an unclassified felony, and under AS 12.55.125(b), is punishable by a term of imprisonment of at least five years but not more than 99 years. Several separate acts are prohibited: (1) delivering a schedule IA (including heroin and methadone) controlled substance to a person under 19 who is at least three years younger than the defendant; (2) delivering a schedule IIA (including LSD and cocaine) or schedule IIIA controlled substance (including hashish and barbiturates) to a person under 19 who is at least three years younger than the defendant; and (3) engaging in a "continuing criminal enterprise."

For all offenses involving the "delivery" (defined in sec. 11.71.900(6)) of a controlled substance to a minor (secs. 11.71.010(a)(1); 11.71.010(a)(2); and 11.71.030(a)(2)), the ages of both the defendant and the minor are of importance. The minor must be under 19 and the defendant must be at least three years older than the minor. The purpose of this age differential is to prevent the imposition of aggravated penalties in a case, where, for example, a 19-year-old shares a controlled substance with a 17-year-old friend. Statutes in several other states, as well as the Uniform Controlled Substances Act, contain a similar three-year age difference requirement. The cut-off age of 19 for offenses involving minors receiving or possessing controlled substances has been selected in order to be consistent with laws involving alcohol in Title 04. One exception to the differentiation between minors and adults at age 19 is the provision where a person 18 or older who possesses a controlled substance on school grounds can be prosecuted and convicted of an aggravated possession offense. See secs. 11.71.030(a)(3); 11.71.040(a)(4).

As previously noted, no culpable mental state is specified in sec. 11.71.010(a)(1) and (a)(2) with respect to the age of the minor. It is the intent of the legislature, consistent with AS 11.81.610(b)(2), that a defendant must act "recklessly" as to the age of the minor in order to be convicted under these subsections. There are sev-

eral reasons for the selection of the "reckless" standard, rather than one of strict liability, which is the standard used with respect to the amount of a substance possessed or delivered. The reasons center around fairness to the defendant. Delivery of a IA, IIA or IIIA controlled substance to a minor is the most serious drug offense, an unclassified felony, with a mandatory minimum of five years imprisonment. Delivery of any other controlled substance to a minor is also a serious crime, a class B felony. Thus, due process concerns justify requiring some culpable mental state with respect to one of the circumstances of the offense, the age of the minor. Another factor is that the age of the minor may not be as easily ascertainable as, for example, the number of tablets a person possesses. It should be noted, however, that a "reasonable belief" that the minor was 19 or over and/or less than three years younger than the deliveror, is not a defense to a charge of delivery of a controlled substance to a minor. Compare State v. Guest and Evan, 583 P.2d 836 (Alaska 1978).

As with all offenses in this chapter, the defendant is not required to act with any culpable mental state regarding the classification of a substance or the fact that possession of the substance is prohibited by law. See AS 11.81.620(a). The defendant, of course, must know that he possesses the substance.

Schedule IA substances are listed in sec. 11.71-.140 and are discussed in the commentary accompanying that section. Heroin and opium are two examples of schedule IA controlled substances. Schedule IIA substances are listed in sec. 11.71.150, and schedule IIIA substances in sec. 11.71.160. Cocaine, LSD, PCP, peyote, mescaline, methamphetamine and methaqualone are scheduled in IIA, while schedule IIIA contains such substances as hashish, barbiturates and narcotics mixed with non-narcotics in specified proportions. As with all other offenses involving the delivery of controlled substances, except schedule VIA substances, this provision requires that "any amount" of the substance be involved. Consequently, the purity of the substance is irrelevant in determining whether an offense has been committed. It is unnecessary that a useable quantity of the substance be involved, as the statute prohibits certain acts involving "any amount" of the substance. See, e.g., Judd v. State, 482 P.2d 273, 280 (Alaska 1971). See also commentary accompanying sec. 11.71.320.

Sec. 11.71.010(a)(3), which prohibits engaging "in a continuing criminal enterprise," is patterned after a similar federal law defined in 21 U.S.C. §848(b). In paralleling the federal statute to a significant degree, it is expected that federal case law will be of assistance to the Alaska courts in applying the provision.

States v. Bergdoll, 412 F. Supp. 1308 (D. Del. 1976).

Sec. 11.71.020. MISCONDUCT INVOLVING A CONTROLLED
SUBSTANCE IN THE SECOND DEGREE.

This offense, a class A felony punishable by a maximum of 20 years imprisonment, prohibits three acts: manufacturing (defined in sec. 11.71.900(13)), or delivering any amount of a schedule IA controlled substance or possessing (defined in sec. 11.81.900(b)(41)) any amount of such a substance with the intent to manufacture or deliver.

Under subsection (a), the defendant need not actually deliver the substance. Possession of the substance with that intent is sufficient to support a conviction. The definition of "deliver" in sec. 11.71.900(6) does not require that the transfer constitute a sale. Merely transferring the substance, or attempting to do so, would constitute a "delivery" under the statute, without regard to remuneration.

Sec. 11.71.030. MISCONDUCT INVOLVING A CONTROLLED
SUBSTANCE IN THE THIRD DEGREE.

This offense, a class B felony punishable by a maximum sentence of 10 years, prohibits three forms of conduct: (1) manufacturing or delivering a schedule IIA or IIIA substance, or possessing any of those substances with intent to manufacture or deliver; (2) delivering a schedule IVA (including tranquilizers such as valium), VA,

The definition of "continuing criminal enterprise" in subsection (b) contains a requirement that the current offense be part of a continuing series of five or more violations of the chapter. A particular number of violations is not specified in the federal statute. The term "violation" does not mean "conviction". See generally, United States v. Michel, 588 F.2d 986 (5th Cir. 1979); cert. den. 444 U.S. 825, 62 L. Ed. 2d 32; United States v. Fry, 413 F. Supp. 1269, 1272 (E.D. Mich. 1976) ("series means three or more related acts") (emphasis added). This offense is not an "habitual" or "repeat" offender statute, nor do all the violations necessarily have to be felony offenses, so long as at least one violation is a felony. See sec. 11.71.010(b)(1).

The purpose of the "continuing criminal enterprise" provision is "to punish and take out of circulation persons who are engaged in the manufacture and sale of drugs primarily for the profits to be derived therefrom." United States v. Jeffers, 532 F.2d 1101, 1110 (7th Cir. 1976), aff'd in part, vacated in part on other grounds, 432 U.S. 137, 53 L. Ed. 2d 168, reh. den. 434 U.S. 880, 54 L. Ed. 2d 164. See also United States v. Valenzuela, 596 F.2d 1361 (9th Cir. 1979), cert. den. 444 U.S. 865, 62 L. Ed. 2d 88; United States v. Bolts, 558 F.2d 316 (5th Cir. 1977), cert. den. 434 U.S. 930, 54 L. Ed. 2d 290; United States v. Sperling, 506 F.2d 1323 (2d Cir. 1974), cert. den. 420 U.S. 962, 43 L. Ed. 2d 439; United

stances on school grounds and can still be prosecuted under the aggravated possession sections, do not pose as serious a hazard to children. Once the state has proven beyond a reasonable doubt that the defendant is 18 or over and that he knowingly possessed a controlled substance on school grounds, the defendant may establish, by a preponderance of the evidence, that at the time of his possession, the school was closed to any organized activity involving juveniles. An example would be the night janitor in a school, who at 2:00 a.m., possesses a marijuana cigarette for his own use. Successfully raising the affirmative defense, however, does not release the defendant from all criminal liability; the defendant could still be convicted of possession of the controlled substance under another statute as a lesser-included offense. The night janitor in the example above could be convicted of Misconduct Involving a Controlled Substance in the Seventh Degree, sec. 11.71.070(a)(2), for possessing less than one ounce of a substance containing marijuana while in a public place.

As used in the affirmative defense, the phrase "any organized activity" includes school as well as non-school activities, so long as the activities are of a type that involve persons under 18. Use of the word "organized" is intended to require that the activity be sanctioned by school officials. Finally, it is important to note that if the circumstances of the possession reveal an

or VIA (marijuana) controlled substance to a person under 19 who is at least three years younger than the defendant; and (3) being 18 or older, possessing any amount of a schedule IA or IIA substance within the grounds of a school or on a parking lot immediately adjacent to the school.

The conduct prohibited by paragraphs (1) and (2) of this statute has been discussed in the commentary accompanying the first and second degree offenses. The only difference between this section and the comparable provisions in the more serious crimes is, of course, the schedule of the substance involved.

Sec. 11.71.030(a)(3) (as well as its companion provision in sec. 11.71.040(a)(4) which applies to schedule IIIA-VIA controlled substances) is an aggravated possession offense intended to deter adults from possessing a controlled substance while in or near schools and school children. The protection of this provision extends to public and private schools, up to and including high schools. The requirement that the defendant be 18 or older is consistent with the general treatment of an 18-year-old as an adult when he commits an offense.

The "affirmative defense" (a term that is defined in AS 11.81.900(b)(1)) specified in subsection (b)(and the companion provision in sec. 11.71.040(b)) prevents conviction under the "school grounds" provision of a class of persons who, while they unlawfully possess controlled sub-

concerning Article 1 of AS 11.71 in this commentary, it is the intent of the legislature that strict liability be applied to the circumstance of the amount of the substance involved in an offense prosecuted under this provision, as well as under other provisions defining the level of an offense based on the amount involved. Compare the discussion in the commentary under sec. 11.71.010, where the culpable mental state of "reckless" must be shown regarding the age of the minor. The amount of a controlled substance, whether by weight or number of tablets, can be determined objectively and easily, where the age of a minor may not be.

In a prosecution under paragraph (2), it is irrelevant whether the defendant received remuneration for the delivery. It should be noted, however, that sec. 20 of the bill adds a new mitigating factor to the list presently included in AS 12.55.155(d), which can be considered at sentencing, that the defendant delivered a small amount of any controlled substance in schedules IIA through VIA to an adult for no remuneration.

Paragraph (3) prohibits the knowing possession of various amounts of controlled substances. Again, strict liability is to be applied to the defendant's awareness of the amount of the substance possessed. See AS 11.81-.600(b)(2). Cf. AS 11.81.610(b)(2). For example, if a person possesses 30 tablets of a schedule IIIA controlled substance, a class C felony, it is irrelevant, and not a

intent to deliver the substance to another person, the defendant can be prosecuted for a more serious crime, such as Misconduct Involving a Controlled Substance in the Second Degree under sec. 11.71.020(a).

Sec. 11.71.040. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE FOURTH DEGREE.

This offense, a class C felony punishable by a maximum term of imprisonment of five years, prohibits ten forms of conduct.

Paragraph (1) prohibits manufacture, delivery, or possession with the intent to manufacture or deliver any amount of a schedule IVA (common tranquilizers) or VA (primarily liquid cough suppressants) controlled substance. Again, the term "any amount" means that the purity of the substance and whether there is a "useable amount" of the substance are irrelevant, so long as there is enough of the controlled substance present for proper identification. See commentary accompanying sec. 11.71.320.

Paragraph (2) prohibits manufacture, delivery or possession with the intent to manufacture or deliver one ounce or more of marijuana, a schedule VIA controlled substance. This paragraph is the first of four provisions in this legislation establishing a penalty scheme for the delivery of marijuana, other than to a minor. The other three provisions cover delivery of less than an ounce of marijuana. As previously noted in the general discussion

stance is present. The purity of the substance is irrelevant in determining weight.

For example, the definition of "marijuana" in sec. 11.71.900(14) provides that some parts of the plant cannabis (those which contain the active ingredient "THC", such as leaves, flowers, and seeds) are "marijuana", while some parts (such as stalks) are not. Under sec. 11.71-.040(a)(3)(F), for example, if a person possesses one pound of cannabis stalks, he does not commit a crime. But if he possesses 10 ounces of leaves, flowers or seeds and 10 ounces of stalks all mixed together, he possesses one pound or more of marijuana for purposes of prosecution.

The "aggregate weight" standard, rather than a "pure weight" standard, has been adopted because it would be almost impossible for law enforcement officials or chemists to separate out all the individual pieces of marijuana from non-marijuana, or to separate out grains of a controlled substance which has been "cut" with a similar-appearing non-controlled substance, and then to test chemically each of the individual pieces or grains. The State of New York encountered such enforcement problems when it revised its statutes relating to marijuana in 1977, changing from an aggregate weight basis to one of pure weight. The problems surfaced in the case of People v. Davis, 408 N.Y.S.2d 748 (N.Y. 1978). There, the defendant was charged with violating one of the marijuana laws under New York's revised pure weight test. New

defense, that he thought he possessed less than 25 tablets, which would have made the conduct a class A misdemeanor. Possession of controlled substances in amounts less than those specified in paragraph (3) are covered by the fifth and sixth degree crimes. The amount distinctions between felony and misdemeanor possession offenses for controlled substances in schedules IIIA through VIA are intended to deter the possession of larger amounts of a controlled substance through imposition of felony penalties, while treating the person who possesses a smaller amount of a controlled substance (which is consistent with personal use) less severely. If the circumstances of the defendant's conduct show beyond a reasonable doubt that the defendant possessed the substance with an intent to deliver, prosecution could be brought under the more serious offenses prohibiting that conduct.

The legislation adopts an "aggregate weight" test for determining the weight of the controlled substance when the weight of the substance possessed or delivered is determinative of the degree of the offense. See secs. 11.71.040(a)(2) and (3)(C), (E) and (F); 11.71.050(a)(1); (2) and (3)(B), (D), and (E); 11.71.060(a)(1), (3), (4); 11.71.070(a)(1) and (2). Under the "aggregate weight" test, the total weight of any preparation, compound, mixture or substance containing a controlled substance is the weight that is relevant for purposes of prosecution and conviction, so long as some amount of a controlled sub-

further with a non-controlled substance. It was felt that this could lead to the creation of, in effect, a double aggregate weight" standard. As a practical matter, however, the use of the term "weighing" has the same effect as the use of the term "of an aggregate weight of" when applied to controlled substances included in schedule VA.

This change was deleted by the conference committee and the term "of an aggregate weight of" was reinserted in sec. 11.71.040(a)(3)(E) in the final version of the bill. However, it should be emphasized that the use of this term is not meant to compound the severity of an offense where the controlled substance itself is defined in terms of the concentration of a substance in a compound, mixture or preparation such as in schedule IIIA, sec. 11.71.160(e), and schedule VA, sec. 11.71.180(b). The purpose of the aggregate weight standard, as indicated above, is to eliminate enforcement problems and for ease of understanding on the part of the public. When the controlled substance itself is defined in terms of the concentration of a substance in a compound, mixture or preparation, a felony possession offense classification is intended only when the statutorily prescribed amount is present in the commonly-used form of the substance and not when it has been diluted further with a totally non-controlled substance with which the controlled substance is not commonly dispensed.

York's definition of marijuana was similar to that in sec. 11.71.900(14) insofar as some parts of the cannabis plant were marijuana, and other parts were not. The chemist who testified at the Davis trial, although competent, could not, "to a reasonable degree of scientific certainty, rule out the presence or gauge the amount of non-marijuana" within the 9.3 pounds of green vegetable matter contained in 20 bags which had been seized from the defendant. 408 N.Y.S.2d at 750. The New York Court dismissed the charge of possession of more than one pound of marijuana, but permitted an instruction to the jury that it could find the defendant guilty of mere possession of any amount of marijuana, a violation. 408 N.Y.S.2d at 751-52. The use of the aggregate weight test is intended to eliminate this potential enforcement problem.

The amendments to the bill made in the House of Representatives included a substitution of the term "weighing" for the term "of an aggregate weight of" in the offense pertaining to the possession of schedule VA controlled substances set out in sec. 11.71.040(a)(3)(E). This change was made as a result of a concern that because of the fact that the substances included in schedule VA, sec. 11.71.180(b), were defined in terms of the concentration of a substance in a compound, mixture or preparation that an application of the "aggregate weight" test would result in an increase in the severity of a possession offense when a schedule VA controlled substance was diluted

Increasingly more severe penalties are provided for the possession of one-half pound and one pound or more of marijuana. Possession of any amount of marijuana by a person under 19 is, however, prohibited under sec.

11.71.060(a)(3). Other acts involving any amount of marijuana, such as delivery to a minor and possession on school grounds, are also treated more severely in this legislation. See, e.g., secs. 11.71.030(a)(2); 11.71.040(a)(4).

While the definition of "manufacture" in sec. 11.71.900(13) specifically excludes the growing of marijuana for personal use, a person who grows marijuana is still subject to prosecution under the possession offenses if the total amount grown yields four ounces or more when reduced to its commonly used form. See sec. 11.71.080. A person may also be prosecuted for "manufacture" of marijuana if the growing of marijuana is not for personal use. Further, nothing in the crimes prohibiting possession precludes a prosecution for "possession with the intent to manufacture or deliver", under sec. 11.71.040(a)(2), 11.71.050(a)(1) or (2), or 11.71.070(a)(1) if that intent is present.

Paragraph (4) is similar to sec. 11.71.030(a)(3), except that controlled substances in lower schedules, when possessed on school grounds, are prohibited under this paragraph. An affirmative defense identical to that found in sec. 11.71.030(b) is also provided. The commentary

Subsection (a)(3)(F) is the first of several subsections which constitute a scheme prohibiting the possession of varying amounts of marijuana. In addition to classifying the possession of one pound or more of a substance containing marijuana as a class C felony in sec. 11.71.040(a)(3)(F), this legislation imposes class A misdemeanor penalties when the substance containing marijuana weighs one-half pound or more (sec. 11.71.050-(a)(3)(E)) and class B misdemeanor penalties when four ounces or more are possessed (sec. 11.71.060(a)(4)).

As noted in the commentary to section 1 of the Act, the classification structure of this legislation is intended to clarify the law in Alaska concerning possession of marijuana, in light of the decision of the Supreme Court of Alaska in Ravin v. State, 537 P.2d 494 (Alaska 1975). Ravin held that Alaska's constitutional right to privacy protects the possession and use of marijuana by an adult, in the home, in amounts indicative of personal use in a purely personal, non-commercial context. The approach taken in this Act is to define, for purposes of the decision in Ravin, an amount which is indicative of personal use, and to provide a clear line of demarcation of four ounces, so that citizens of this state will know precisely what conduct is prohibited. This classification structure is also intended to provide enforcement agencies in this state with adequate legislative guidelines, and to resolve the ambiguities created by the Ravin decision.

manufacture or deliver to an adult of one-half ounce or more of a substance containing marijuana, whether for remuneration or not, is a class A misdemeanor under this section. Similar acts involving less than one-half ounce of a substance containing marijuana, where there is remuneration, is also prohibited under this section. As discussed in the commentary accompanying sec. 11.71.040, the "aggregate weight" standard is again used in determining the weight of the controlled substance, where the weight is determinative of the degree of the offense. The term "remuneration" is intended to require some form of consideration for the marijuana, and includes money, as well as any other transfer of property or services having a benefit. There is no requirement that the transfer for remuneration be for profit. Compare to sec. 12.55.155-(d)(15). The seller of marijuana cannot insulate himself from prosecution for a misdemeanor or felony by using an agent, who may receive no "cut" from the sale, to consummate the sale. Similarly, the agent cannot insulate himself from prosecution by claiming he received no profit from the transaction. Remuneration may take place before, during or after the actual, constructive, or attempted transfer of the substance. This provision includes the situation where a person pays for something he has received, by delivering marijuana, as well as the sale of marijuana for some kind of remuneration.

accompanying sec. 11.71.030(a)(3) and (b) is similarly applicable to these comparable provisions of the fourth degree offense.

Paragraph (a)(5) prohibits keeping or maintaining a building, vehicle or other place which is used for keeping or distributing a controlled substance in violation of a felony offense under AS 11.71 or AS 17.30. This provision, for example, would include the landlord of a warehouse who knowingly rents to a person who uses the structure for manufacturing or distributing controlled substances illegally.

The remaining offenses included in this section (paragraphs (6)-(10)) prohibit various unlawful acts involving controlled substances, including using a revoked registration number while distributing a controlled substance, submitting false information in reports required to be filed under AS 17.30; and obtaining a controlled substance by deception, through, for example, passing a forged prescription.

Sec. 11.71.050. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE FIFTH DEGREE.

This offense, a class A misdemeanor punishable by a maximum sentence of one year, prohibits delivery of less than one ounce of marijuana, as well as the possession of schedule IIIA-VIA controlled substances in amounts less than those specified in the fourth degree crime. Manufacture, delivery to an adult, or possession with intent to

use does not apply to minors. 537 P.2d at 511 and n. 69.

Paragraph (4) is discussed in the commentary accompanying sec. 11.71.040, while paragraph (5) is directed at the legitimate industry involved in the handling and delivery of controlled substances.

Sec. 11.71.070. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE SEVENTH DEGREE.

This offense prohibits two forms of conduct. The first, covered by subsection (a)(1), is the bottom rung of the scheme pertaining to the manufacture, delivery, or possession with the intent to manufacture or deliver marijuana, other than to a minor. It provides that any of these acts, involving less than one-half ounce of a substance containing marijuana, is a violation. The distinction between this provision and that found in sec. 11.71.050(a)(2) is that the latter, a class A misdemeanor, requires that the delivery be "for remuneration." This provision does not contain such a requirement, and thus is applicable to the situation where one adult passes a marijuana cigarette to another at a party, for no remuneration.

Subsection (a)(2) prohibits the possession of less than one ounce of marijuana in public. If the marijuana is used or displayed in public, however, prosecution may be brought under sec. 11.71.060(a)(1), a class B misdemeanor.

Additionally, failing to make, keep, or furnish any information required by AS 17.30, the provisions in the Act pertaining to the regulation of the legitimate drug industry, is a class A misdemeanor.

Sec. 11.71.060. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE SIXTH DEGREE.

This crime, a class B misdemeanor punishable by a maximum term of imprisonment of 90 days, prohibits seven acts, six of which involve marijuana.

The use of any amount of marijuana, the display of any amount of marijuana or the possession of one ounce or more of a substance containing marijuana in public is prohibited by paragraph (1). The possession of marijuana within the immediate control of a person who is operating a propelled vehicle is covered by paragraph (2). This includes possession of marijuana in the "glove box" of a car or truck. The term "propelled vehicle" is defined in AS 11.81.900(b)(43).

While a person under 19 can be prosecuted for possessing less than four ounces of a substance containing marijuana under paragraph (3), this provision does not preclude prosecution of a juvenile for other offenses involving marijuana. An example would be possession of one pound or more of marijuana. Sec. 11.71.040(a)(3)(F). The prohibition in paragraph (3) codifies a holding implicit in Ravin v. State, supra, that the protection afforded to adults in possessing marijuana in the home for personal

Sec. 11.71.080. AGGREGATE WEIGHT OF LIVE MARIJUANA PLANTS.

This section is intended to clarify the "aggregate weight" provisions as they apply to possession of varying amounts of marijuana, when that possession is of a live cannabis (marijuana) plant itself, rather than of harvested, ready-to-use marijuana. This section makes it clear that an adult who grows his own marijuana for personal use can legally possess a cannabis plant or plants weighing four ounces or more, so long as the marijuana which can be produced by the plant or plants, from its "commonly used form", does not exceed an aggregate weight of four ounces.

ARTICLE 2. STANDARDS AND SCHEDULES

Sec. 11.71.100. CONTROLLED SUBSTANCES ADVISORY COMMITTEE.

This section establishes the nine-member Controlled Substances Advisory Committee in the Department of Law, sets forth the membership of the committee, specifies terms of appointment and compensation, designates the attorney general as the chairman, provides that five members are necessary to constitute a quorum and provides that a majority of the total membership is necessary for official action.

Sec. 11.71.110. DUTIES OF THE COMMITTEE.

This section specifies the duties of the Controlled Substances Advisory Committee. Among other

The aggregate weight standard, as previously discussed in this commentary, equally applies to the provisions of this section.

Offenses committed under this section are classified as violations. The term "violation" is defined in AS 11.81.900(b)(55). Authorized sentences for violations are specified in AS 12.55.035(b)(5) and 12.55.140.

However, an offense committed under this section, 11.71.070, carries a maximum penalty of a \$100 fine, as specified in subsection (b), rather than a maximum possible fine of \$300, as provided for other violations. Compare, for example, this provision with a similar approach in AS 11.61.110(c).

In restricting the maximum possible fine to \$100, the legislature does not in any way intend for different procedural consequences to attach in proceedings initiated under this section. Because the offenses included are classified as violations, the prohibited conduct does not indicate criminality. Additionally, the provisions of AS 11.81.900(b)(55) pertaining to the rights of trial by jury and appointed counsel and the provisions of AS 12.55.180--12.55.230 pertaining to the enforcement of violations are to be fully applicable to offenses under this section.

trolled substances. These criteria were also considered and followed by the legislature in passing this legislation. The criteria which must be assessed when the committee considers the scheduling, rescheduling or removal of a controlled substance from the schedules are set forth in APPENDIX C, along with a comparison with the criteria required under federal law. These criteria include: (1) the actual or probable abuse of a substance; (2) the biomedical hazard of a substance; (3) whether a substance is an immediate precursor of a substance already controlled; (4) the current state of scientific knowledge concerning a substance; and (5) the relationship between use of a substance and other criminal activity. Scheduling decisions are based on findings made under these criteria viewed as a whole, without any of the criteria necessarily being given more weight than any other.

The specified criteria differ from federal law in several ways. First, the federal requirements in schedule I include "no currently accepted medical use" of the substance. 21 U.S.C. § 812(b)(1)(B). This criterion has been specifically omitted from this Act. Marijuana and LSD, for example, are scheduled federally as schedule I controlled substances because of this standard. 21 U.S.C. § 812(c)(9) and (10). Second, in Alaska, all the criteria are considered in determining the danger or probable danger of each controlled substance, even though some of the criteria may not apply to a particular substance. In

things, the committee is to advise the governor on the need to add, delete or reschedule substances. The committee is advisory only, and all of its duties should be viewed in that light.

The purpose of this committee is to provide an overview of drug use and abuse in Alaska and to determine what is being done about it, from the standpoints of law enforcement, treatment and counseling, prevention and education, and legitimate handlers. This committee should be able to study Alaska's resources for eliminating and preventing drug abuse, and suggest cohesive policies which will enable all agencies to function more effectively.

Sec. 11.71.120. AUTHORITY TO SCHEDULE CONTROLLED SUBSTANCES.

The first two subsections of this section provide that the governor shall introduce legislation regarding the controlled substances schedules upon either of two events occurring: (1) if the advisory committee recommends that a substance be added to, deleted from or rescheduled within the schedules, the governor must take action in accordance with the recommendation; or (2) if a substance is added to a federal schedule of controlled substances, the governor must also introduce legislation in accordance with the federal enactment.

Subsection (c) establishes the criteria to be considered by the committee in making a determination regarding the addition, deletion or rescheduling of con-

lative Purpose, that marijuana poses a serious threat to the public health. However, substances placed in schedule VIA have the lowest degree of danger or probable danger to an individual or the public relative to those substances controlled under higher schedules, considering the criteria specified in sec. 11.71.120(c).

Secs. 11.71.140--11.71.190. SCHEDULES.

All controlled substances are classified into one of six schedules, which are labeled schedules IA through VIA. The scheduling of substances is patterned after federal law, which classifies substances into five schedules, labeled I through V. 21 U.S.C. §812; 21 C.F.R. §§1308.11-.15. Alaska has adopted the letter "A" after its numbered schedule to clearly distinguish between state and federal schedules. Additionally, because of factors unique to this state, a sixth schedule containing only the controlled substance marijuana is created.

The schedules are largely self-explanatory. A chart showing the classification of major categories of controlled substances within the six schedules is included as APPENDIX B. A comparison of the scheduling of controlled substances under the Alaska statutes with scheduling under federal law is contained in APPENDIX D.

contrast, federal law more specifically designates the weight to be given to certain factors, requiring different findings for placement in different schedules. See 21 U.S.C. §812(b)(1)-(5). Third, while the criteria in paragraphs (1)-(4) are similar or identical to some criteria included in federal law, (21 U.S.C. §811(c)), the Alaska criterion specified in paragraph (5), "the relationship between the use of the substance and other criminal activity," is not found in federal law. By adoption of this factor, the legislature has specifically found that there is or may be a relationship between the use of certain controlled substances and other criminal activity, including but not limited to those factors set out in subparagraphs (A)-(D).

The "danger or probable danger of the substance" determines the schedule in which it is placed. The degree of danger or probable danger of any substance is relative to all of the other controlled substances. Substances having the highest degree of danger or probable danger are placed in schedule IA, while those with lower degrees of danger or probable danger, in relationship to other substances, are placed in descending schedules. The description in schedule VIA preceding the listing of substances in that schedule is not intended to mean that any substance scheduled in VIA has little or no danger to a person or the public. On the contrary, the legislature has specifically found, as stated in the Declaration of Legis-

hashish and hashish oil; and small amounts of codeine, morphine and opium which are combined with other ingredients in recognized therapeutic amounts.

It should be noted that the classification of hashish, hashish oil and tetrahydrocannabinols as schedule IIIA substances is a classification that is higher than the classification of marijuana as a schedule VIA substance, although both come from the cannabis plant. This classification distinction has been made because hashish and hashish oil are more compact and are generally of higher potency than marijuana. This fact makes trafficking in these substances more profitable, encourages smuggling, and makes their relative danger significantly greater than that of marijuana. See sec. 11.71.120-(c)(5)(B).

Sec. 11.71.170. SCHEDULE IVA.

This section provides that Schedule IVA substances are less dangerous than Schedule IIIA substances but more dangerous than substances included in Schedule VA. Schedule IVA includes less serious depressants such as barbital, phenobarbital, tranquilizers such as valium, librium and tranxene, a few stimulants, and darvon, most or all of which are obtained by prescription.

Sec. 11.71.140. SCHEDULE IA.

This section establishes Schedule IA substances as those having the highest degree of danger. Schedule IA includes, among others, opium, codeine, heroin, morphine, and their derivatives, demerol, dilaudid, percodan and methadone.

Sec. 11.71.150. SCHEDULE IIA.

This section provides that Schedule IIA substances are those less dangerous than substances classified in Schedule IA and more dangerous than those in other schedules. Schedule IIA includes (hallucinogens such as LSD, analogs of PCP, and mescaline; serious depressants such as methaqualone and PCP; stimulants such as amphetamine and methamphetamine; and the substance cocaine. The definition of cocaine and coca leaves in subsection (c) includes both natural and synthetic cocaine, the former known as "L-cocaine", and the latter as "D-cocaine", an isomer of natural cocaine.

Sec. 11.71.160. SCHEDULE IIIA.

This section establishes Schedule IIIA substances as those more dangerous than substances classified in Schedule IVA but not as dangerous as the substances included in Schedule IIA. Schedule IIIA presently includes barbiturates and their derivatives, am-, seco-, and pentobarbital; moderately serious stimulants and depressants;

Sec. 11.71.180. SCHEDULE VA.

This section provides that Schedule VA substances are less dangerous than Schedule IVA substances but more dangerous than substances included in Schedule VIA.

Schedule VA includes very small amounts of codeine, ethylmorphine and opium combined with other ingredients in recognized therapeutic amounts with medicinal qualities. These substances generally are cough suppressants, obtained either by prescription or by requiring the purchaser's signature.

Sec. 11.71.190. SCHEDULE VIA.

This section establishes Schedule VIA as the least dangerous of the controlled substances and includes marijuana.

Sec. 11.71.195. EXEMPTED DRUGS.

This section attempts to ensure consistency with federal law by providing that any substance which is specifically exempt from criminal penalty under federal law is exempt from control under this chapter and AS 17.30. The list of exempted drugs under federal law can be found at 21 C.F.R. §1308.22, as of April 1, 1980. This section is intended to include substances which are subsequently exempted under federal law.

ARTICLE 3. MISCELLANEOUS PROVISIONS

Sec. 11.71.300. PENALTIES UNDER OTHER LAWS.

This section emphasizes that the criminal penalties imposed by this chapter are in addition to, and not in place of, civil or administrative penalties applicable to the prohibited conduct.

Sec. 11.71.305. REHABILITATION.

This section, based on former AS 17.12.120, and added by the House of Representatives, recognizes that rehabilitation is one factor to be considered in sentencing and the responsibility of the state to make rehabilitative services available to persons convicted of offenses involving their personal use of controlled substances. This section does not prevent a judge from ordering or recommending rehabilitative treatment as a condition of a suspended sentence or a suspended imposition of sentence at an agency other than one within the auspices of the Department of Health and Social Services. This section applies only where the defendant's personal use of the controlled substance related to the offense for which he has been convicted. Rehabilitative services under this section can only be offered in connection with a term of imprisonment or as a requirement of probation or suspended imposition of sentence. Of course, if the sentencing provisions in AS 12.55 require imposition of a presumptive

term of imprisonment, that term of imprisonment must be served.

Sec. 11.71.310. BAR TO PROSECUTION.

When read in conjunction with sec. 11.71.300, this provision makes clear that while a person cannot receive multiple criminal penalties for the same conduct under state and federal law, the person can be penalized criminally, civilly and/or administratively for the same conduct.

Sec. 11.71.320. DEFENSES EXEMPTED.

Subsection (a) codifies the law established in Lee v. State, 511 P.2d 1076 (Alaska 1973). In a prosecution for possession of a controlled substance (except marijuana) the state need not prove that the defendant possessed the substance in a "useable quantity." This applies so long as there is a sufficient quantity of the substance to permit proper identification, except in circumstances such as those in Howard v. State, 496 P.2d 657 (Alaska 1972). In the Howard case, there was no controlled substance left for testing, as the buyer of the heroin from Howard used it all himself. However, other evidence, including testimony from the addict who used the heroin, established beyond a reasonable doubt that Howard had supplied heroin.

Subsection (b) expands on the holding of State v. Erickson, 574 P.2d 1 (Alaska 1978). In that case the legislative classification of cocaine as a narcotic drug was held not to be violative of equal protection or due process, upon evidence which showed that cocaine is not pharmacologically a narcotic. This subsection provides that it is not a defense to a charge that a substance may be misclassified within a particular schedule; for example, as a depressant, when scientific evidence may show the substance is an hallucinogen. The prosecution can proceed under the degree of the offense applicable to the act and placement of that substance within a schedule, without regard to labeling or other terms used under subsections within a schedule.

Sec. 11.71.330. LIABILITY OF PUBLIC SERVANTS.

This section makes it clear that a public servant acting within the scope and authority of his employment is not criminally or civilly liable for misconduct involving a controlled substance.

Sec. 11.71.340. OFFENSES DEFINED BY AMOUNTS.

This section provides that, in a prosecution where the degree of an offense is determined by the amount of the substance possessed, it is not a defense to a lower class of offense that the amount of the controlled substance possessed was equal to or larger than the amount

which would make the offense a higher class of crime. In short, it is not a defense to a crime that the defendant actually committed a higher class of crime. This section is intended to have the same effect on offenses of misconduct involving controlled substances that AS 11.81.615 has on other crimes, such as theft offenses.

Sec. 11.71.350. BURDEN OF PROOF.

This section provides that it is the defendant's burden to prove, by a preponderance of the evidence, any exemption or exception claimed by him. The state is not required to disprove, beyond a reasonable doubt, any exemption or exception provided for under AS 11.71 or AS 17.30. This section is similar to existing AS 17.10.180 and 17.12.100.

Sec. 11.71.360. UNPRIVILEGED COMMUNICATIONS.

This section adopts existing AS 17.10.170(b), applicable only to narcotics, and expands it to all controlled substances. It provides that communications between a person and a licensed practitioner, (defined in sec. 11.71.900(19)) in an effort to commit a crime involving a controlled substance, are not privileged communications. A defendant could not therefore claim the physician-patient privilege to prevent the practitioner from testifying about the communications. This is consistent with Alaska Rule of Evidence 504(d)(2) and (7).

ARTICLE 4. DEFINITIONS

Sec. 11.71.900. DEFINITIONS.

This section defines words and phrases that are used throughout AS 11.71. Many of these definitions are similar or identical to those contained in the federal Controlled Substances Act of 1970. The federal definitions appear at 21 U.S.C. §802. Some of the definitions distinguish between acts performed by practitioners in the course of their medical practice and acts performed by persons who are not authorized to manufacture, distribute or dispense controlled substances. For example, the words "administer" and "dispense" refer to acts performed by a practitioner; "deliver or delivery" is the "actual, constructive, or attempted transfer from one person to another of a controlled substance," and includes practitioners as well as non-practitioners; and "distribute" is the delivery of a controlled substance other than by dispensing or administering.

The definition of "manufacture" specifically excludes "the growing of marijuana for personal use." The definition of "marijuana" includes "the seeds, and leaves, buds, and flowers of the plant (genus) Cannabis." It is not limited to the plant Cannabis Sativa L, which is one species of the cannabis plant. There may be more than one species, and the definition of marijuana in this Act has been drafted broadly enough to include any and all other species of the cannabis plant. Thus, litigation on the

question whether all species are included in the definition, such as that engendered in United States v. Maskeny, 609 F.2d 183 (5th Cir. 1980), United States v. Gavic, 520 F.2d 1346 (8th Cir. 1975), reh. and reh. en banc den. (1975), People v. Holcomb, 532 P.2d 45 (Colo. 1975) (en banc), and Luginbill v. State, 574 P.2d 140 (Kan. 1977), would be unnecessary.

Section 3. Sec. 12.55.015. AUTHORIZED SENTENCES.

This section of the Act adds a new subsection (d) to this provision in AS 12.55. In sentencing a person for a felony or misdemeanor under AS 11.71.010--11.71.060, and after a determination that the defendant is a drug abuser, a court may order the defendant to participate in a drug abuse treatment program. Any such participation is to be in addition to any mandatory sentence, including a presumptive sentence. Such participation may be a condition of probation, a condition of a suspended sentence or a condition of a suspended imposition of sentence. This section codifies one aspect of the Chaney criteria. State v. Chaney, 477 P.2d 441 (Alaska 1970). This section is not intended to mean that the "rehabilitation" factor should be given any more or less weight in any sentencing proceeding, because of its codification here.

Section 4. CONTROLLED SUBSTANCES.

ARTICLE I. REGULATION OF MANUFACTURE, DISTRIBUTION,
PRESCRIPTION AND DISPENSING OF CONTROLLED SUBSTANCES

This chapter generally places within the Board of Pharmacy the responsibility for regulating the legitimate industry which is involved in the manufacture, distribution and dispensing of controlled substances. Prior Alaska law in AS 17.10 and 17.12 placed responsibility for this duty jointly upon the Board of Pharmacy for narcotic drugs, and with the Commissioner of Health and Social Services for non-narcotic drugs. The intent of this chapter is to focus responsibility for regulation within one agency, and to cause state regulations to be consistent with federal regulations pertaining to the legitimate industry.

Sec. 17.30.010. REGULATIONS.

This section establishes the Board of Pharmacy as the agency responsible for the administration of laws pertaining to the legitimate manufacture, distribution and dispensing of controlled substances, and requires the board to adopt regulations for the administration of AS 17.30. The section also allows the imposition of reasonable fees for registration. This chapter and the regulations to be adopted under it are required to be patterned after federal law, so that there is consistency between state and federal requirements placed upon persons

required to register, keep records, and handle prescriptions and other order forms.

Sec. 17.30.020. REGISTRATION REQUIREMENTS.

This section requires annual registration with the Board of Pharmacy of persons who manufacture, distribute, dispense or conduct research with a controlled substance within the state, or who propose to do so.

Subsection (c) lists persons who may lawfully possess controlled substances under this chapter without registering.

First, a person who is an agent or employee of a registrant may possess a controlled substance so long as that possession is incidental to the usual course of business or employment. Should the person possess a controlled substance not incidental to the usual course of business or employment, the person subjects himself to criminal, civil and/or administrative penalties set forth in other sections, in AS 11.71, 17.30 and 17.35.

Second, a person who is a common or contract carrier or warehouseman, or his employee, whose possession of a controlled substance is within the usual course of his business or employment, may lawfully possess a controlled substance under this chapter without registering. However, the same caveat applies: should the person possess a controlled substance not within the usual course of his business or employment, the person is subject to crim-

inal, civil and/or administrative penalties under other sections, as listed in the previous paragraph.

Third, the person who is an "ultimate user", in possession of a controlled substance under a lawful order or prescription, or who is in lawful possession of a schedule VA controlled substance, may legally possess the substance without registering under AS 17.30 or 17.35. "Ultimate user" is defined in sec. 11.71.900(27), and includes the prescription holder or a family member, when the use is for the holder or family member. A person who picks up a prescription for a controlled substance for a spouse, child or pet is an "ultimate user", and can lawfully possess the controlled substance without criminal liability under AS 11.71. Possession in this instance is considered to be authorized in AS 17.30, and thus is an exception to criminal liability noted in subsection (a) of each of the sections in 11.71.010--11.71.070. The "ultimate user" of a controlled substance pursuant to a lawful prescription can lawfully possess the substance anywhere, even on school grounds. However, that person may be prosecuted for possession of a controlled substance with the intent to deliver, should he possess the substance with that intent, or for any offenses other than a possessory offense should he engage in such other conduct.

Sec. 17.30.030. REGISTRATION.

This section provides that a person who is registered under federal law to manufacture, distribute or dispense a controlled substance in Alaska shall be registered by the Board of Pharmacy, unless the board finds that the registration would be inconsistent with the public interest. Several factors are specified which are to be considered by the board in determining the public interest. Of primary importance is the ability of the applicant to maintain effective controls against diversion of the controlled substance into illicit channels.

Subsection (c) provides that any manufacturer, distributor or dispenser who complies with federal law regarding registration requirements (other than fees), is entitled to be registered under this chapter. This subsection is not to be read as inconsistent with, or more specific than, subsection (a) of this section.

Sec. 17.30.040. DENIAL, REVOCATION AND SUSPENSION OF REGISTRATION.

This section establishes procedures and grounds for the denial, revocation or suspension of a registration applied for or issued under this chapter. It also establishes a procedure for disposition of an applicant's or registrant's controlled substances during any denial, revocation or suspension proceedings.

Subsection (a) provides that the board may deny, suspend or revoke a registration applied for or issued

under the previous section if it finds that the registrant has committed any of three acts: (1) furnishing false or fraudulent material information in an application filed under this chapter; (2) being convicted of any felony offense (not only drug-related) under state or federal law; or (3) having a federal controlled substance registration denied, suspended, or revoked.

Subsection (b) provides that the board may limit its denial, revocation or suspension of a registration to a particular controlled substance, for which grounds for such action by the board exist.

Subsection (c) provides a procedure for the disposition of controlled substances owned or possessed by the applicant or registrant at the time of the denial, suspension or the effective date of the revocation order. The controlled substances may be placed under seal by the Board of Pharmacy or by the Department of Public Safety. A final disposition cannot be made of the controlled substances under seal until the time for taking an appeal has elapsed, or until all appeals have been concluded. The only exception to this general rule is that a court, upon application, may order the sale of perishable substances, and the proceeds of the sale are to be deposited with the court, even though the time for taking an appeal has not run, or any appeal has not been concluded. After the appropriate time periods or when appeals have run their course, and when a revocation order is final, all of the

controlled substances held by the registrant are to be forfeited to the state.

Subsection (d) provides that the Board of Pharmacy shall promptly notify the federal Drug Enforcement Administration of any order it issues denying, suspending or revoking registrations, and of all forfeitures of controlled substances under this section or sec. 17.30.110.

Sec. 17.30.050. ORDER TO SHOW CAUSE.

This section establishes procedures which must be followed by the Board of Pharmacy before it denies, suspends, revokes or refuses to renew a registration under this chapter. This section also provides that the board may suspend a registration without complying with these procedures, if there is imminent danger to the public health or safety which justifies immediate suspension.

Sec. 17.30.060. RECORDS OF REGISTRANTS.

This section provides that persons registered under this chapter must keep records and inventories in conformity with federal requirements and any additional requirements established by the board.

Sec. 17.30.070. ORDER FORMS; PRESCRIPTIONS.

Subsection (a) provides for distribution of a controlled substance by one registrant to another regis-

trant only in accordance with federal requirements for order forms.

Subsection (b) provides that a practitioner may not dispense a controlled substance other than in accordance with federal requirements regarding prescriptions for controlled substances.

Subsection (c) provides that if the classification of a controlled substance is different under the Alaska schedules than under the federal schedules, the requirements of subsections (a) and (b) of this section are determined by the classification of the substance under federal law. For example, if under federal law a particular controlled substance is a schedule II controlled substance, but under Alaska law it is a schedule IA controlled substance, the requirements of federal law pertaining to prescriptions and order form requirements for schedule II substances apply under this section.

Sec. 17.30.080. UNLAWFUL ADMINISTRATION, PRESCRIPTION AND DISPENSATION OF CONTROLLED SUBSTANCES.

This provision is taken from a similar provision in federal law, 21 U.S.C. §829(c), applying only to schedule V substances. The effect upon licensed practitioners is to treat them no differently than any other offender under secs. 11.71.010--11.71.070 when the practitioner dispenses, administers or prescribes a controlled substance for any reason other than a medical purpose. For example, a physician who frequently writes several pre-

criptions for a schedule IA substance for a "patient", knowing that the person is addicted to the drug, has no medical condition other than the addiction necessitating the administration of that drug, and that the person sells the drug on the street in order to support his own habit, is liable under sec. 11.71.020(a) for the unlawful delivery of a schedule IA controlled substance. See also 21 U.S.C. §828(e).

ARTICLE 2. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

Sec. 17.30.100. COOPERATIVE ARRANGEMENTS.

This section, patterned after a similar provision in the Uniform Controlled Substances Act, is intended to foster more effective law enforcement cooperation in suppressing the trafficking in and abuse of controlled substances.

Sec. 17.30.110. FORFEITURES.

This section establishes a comprehensive scheme for the forfeiture of property used in violation of AS 11.71, 17.30 or 17.35. It specifies what property is subject to forfeiture and the procedures that are to be followed to achieve forfeiture. It is intended that federal statutory and case law will be followed should the Alaskan statutory scheme and this commentary leave any questions unanswered.