

By Rep. BERKOWITZ ✓

24-LS1300X.1
Luckhaupt
5/4/06

AMENDMENT # 1

OFFERED IN THE HOUSE

TO: HCS CSSB 216(FIN)

1 Page 1, line 1, following "evasion;": *(title amendment)*

2 Insert "relating to methamphetamines; relating to illegal drug manufacturing
3 sites;"

4
5 Page 2, following line 31:

6 Insert new bill sections to read:

7 **** Sec. 5.** AS 11.71.020(a) is amended to read:

8 (a) Except as authorized in AS 17.30, a person commits the crime of
9 misconduct involving a controlled substance in the second degree if the person

10 (1) manufactures or delivers any amount of a schedule IA controlled
11 substance or possesses any amount of a schedule IA controlled substance with intent
12 to manufacture or deliver;

13 (2) manufactures any material, compound, mixture, or preparation that
14 contains

15 (A) methamphetamine, or its salts, isomers, or salts of isomers;

16 or

17 (B) an immediate precursor of methamphetamine, or its salts,
18 isomers, or salts of isomers;

19 (3) possesses an immediate precursor of methamphetamine, or the
20 salts, isomers, or salts of isomers of the immediate precursor of methamphetamine,
21 with the intent to manufacture any material, compound, mixture, or preparation that
22 contains methamphetamine, or its salts, isomers, or salts of isomers; [OR]

23 (4) possesses a listed chemical with intent to manufacture any material,

1 compound, mixture, or preparation that contains

2 (A) methamphetamine, or its salts, isomers, or salts of isomers;

3 or

4 (B) an immediate precursor of methamphetamine, or its salts,
5 isomers, or salts of isomer;

6 **(5) possesses methamphetamine in an organic solution with intent**
7 **to extract from it methamphetamine or its salts, isomers, or salts of isomers; or**

8 **(6) under circumstances not proscribed under AS 11.71.010(a)(2),**
9 **delivers**

10 **(A) an immediate precursor of methamphetamine, or the**
11 **salts, isomers, or salts of isomers of the immediate precursor of**
12 **methamphetamine, to another person with reckless disregard that the**
13 **precursor will be used to manufacture any material, compound, mixture,**
14 **or preparation that contains methamphetamine, or its salts, isomers, or**
15 **salts of isomers; or**

16 **(B) a listed chemical to another person with reckless**
17 **disregard that the listed chemical will be used to manufacture any**
18 **material, compound, mixture, or preparation that contains**

19 **(i) methamphetamine, or its salts, isomers, or salts of**
20 **isomers;**

21 **(ii) an immediate precursor of methamphetamine, or**
22 **its salts, isomers, or salts of isomers; or**

23 **(iii) methamphetamine or its salts, isomers, or salts**
24 **of isomers in an organic solution.**

25 * **Sec. 6.** AS 11.71.020 is amended by adding a new subsection to read:

26 (d) In a prosecution under (a) of this section, possession of more than six
27 grams of the listed chemicals ephedrine, pseudoephedrine, phenylpropanolamine, the
28 salts, isomers, or salts of isomers of those chemicals is prima facie evidence that the
29 person intended to use the listed chemicals to manufacture, to aid or abet another
30 person to manufacture, or to deliver to another person who intends to manufacture
31 methamphetamine, its immediate precursors, or the salts, isomers, or salts of isomers

1 of methamphetamine or its immediate precursors. The prima facie evidence described
2 in this subsection does not apply to a person who possesses

3 (1) the listed chemicals ephedrine, pseudoephedrine,
4 phenylpropanolamine, or the salts, isomers, or salts of isomers of those chemicals

5 (A) and the listed chemical was dispensed to the person under a
6 valid prescription; or

7 (B) in the ordinary course of a legitimate business, or an
8 employee of a legitimate business, as a

9 (i) retailer or as a wholesaler;

10 (ii) wholesale drug distributor licensed by the Board of
11 Pharmacy;

12 (iii) manufacturer of drug products licensed by the
13 Board of Pharmacy;

14 (iv) pharmacist licensed by the Board of Pharmacy; or

15 (v) health care professional licensed by the state; or

16 (2) less than 24 grams of ephedrine, pseudoephedrine,
17 phenylpropanolamine, or the salts, isomers, or salts of isomers of those chemicals,
18 kept in a locked storage area on the premises of a legitimate business or nonprofit
19 organization operating a camp, lodge, school, day care center, treatment center, or
20 other organized group activity, and the location or nature of the activity, or the age of
21 the participants, makes it impractical for the participants in the activity to obtain
22 medicinal products.

23 * **Sec. 7.** AS 11.71.030(a) is amended to read:

24 (a) Except as authorized in AS 17.30, a person commits the crime of
25 misconduct involving a controlled substance in the third degree if the person

26 (1) under circumstances not proscribed under AS 11.71.020(a)(2) - (6)
27 [AS 11.71.020(a)(2) - (4)], manufactures or delivers any amount of a schedule IIA or
28 IIIA controlled substance or possesses any amount of a schedule IIA or IIIA controlled
29 substance with intent to manufacture or deliver;

30 (2) delivers any amount of a schedule IVA, VA, or VIA controlled
31 substance to a person under 19 years of age who is at least three years younger than

1 the person delivering the substance; or

2 (3) possesses any amount of a schedule IA or IIA controlled substance

3 (A) with reckless disregard that the possession occurs

4 (i) on or within 500 feet of school grounds; or

5 (ii) at or within 500 feet of a recreation or youth center;

6 or

7 (B) on a school bus.

8 * **Sec. 8.** AS 11.71 is amended by adding a new section to article 2 to read:

9 **Sec. 11.71.210. Purchase or receipt of restricted amounts of certain listed**
 10 **chemicals.** (a) A person commits the crime of purchase or receipt of restricted
 11 amounts of certain listed chemicals if the person purchases or receives more than six
 12 grams of the following listed chemical, its salts, isomers, or salts of isomers within
 13 any 30-day period:

14 (1) ephedrine under AS 11.71.200(4);

15 (2) pseudoephedrine under AS 11.71.200(13);

16 (3) phenylpropanolamine under AS 11.71.200(11).

17 (b) This section does not apply to a person who lawfully purchases or receives

18 (1) more than six grams of a listed chemical identified in (a) of this

19 section

20 (A) that was dispensed to the person under a valid prescription;

21 or

22 (B) in the ordinary course of a legitimate business, or to an
 23 employee of a legitimate business, as a

24 (i) retailer or as a wholesaler;

25 (ii) wholesale drug distributor licensed by the Board of

26 Pharmacy;

27 (iii) manufacturer of drug products licensed by the
 28 Board of Pharmacy;

29 (iv) pharmacist licensed by the Board of Pharmacy; or

30 (v) a health care professional licensed by the state; or

31 (2) more than six but less than 24 grams of a listed chemical identified

1 in (a) of this section in the ordinary course of a legitimate business or nonprofit
 2 organization, or as an employee of a legitimate business or nonprofit organization,
 3 operating a camp, lodge, school, day care center, treatment center, or other organized
 4 group activity, and the location or nature of the activity, or the age of the participants,
 5 makes it impractical for the participants in the activity to obtain medicinal products.

6 (c) Purchase or receipt of restricted amounts of certain listed chemicals is a
 7 class C felony."
 8

9 Renumber the following bill sections accordingly.

10
 11 Page 3, following line 27:

12 Insert new bill sections to read:

13 **"* Sec. 11.** AS 12.30.023 is amended by adding a new subsection to read:

14 (b) In addition to conditions the court may impose under (a) of this section and
 15 notwithstanding other provisions in this chapter, if the defendant is charged with
 16 manufacturing methamphetamine under AS 11.71.020(a)(2), unless the defendant
 17 proves to the satisfaction of the court that the defendant's only role in the offense was
 18 as an aider or abettor and that the defendant did not stand to benefit financially from
 19 the manufacturing, the court shall require the posting of a minimum of \$250,000 cash
 20 bond if the defendant has previously been convicted in this or another jurisdiction of
 21 manufacturing, delivering, or possessing methamphetamine.

22 *** Sec. 12.** AS 12.55.125(c) is amended to read:

23 (c) Except as provided in (i) of this section, a defendant convicted of a class A
 24 felony may be sentenced to a definite term of imprisonment of not more than 20 years,
 25 and shall be sentenced to a definite term within the following presumptive ranges,
 26 subject to adjustment as provided in AS 12.55.155 - 12.55.175:

27 (1) if the offense is a first felony conviction and does not involve
 28 circumstances described in (2) of this subsection, five to eight years;

29 (2) if the offense is a first felony conviction

30 (A) and the defendant possessed a firearm, used a dangerous
 31 instrument, or caused serious physical injury or death during the commission

1 of the offense, or knowingly directed the conduct constituting the offense at a
 2 uniformed or otherwise clearly identified peace officer, fire fighter,
 3 correctional employee, emergency medical technician, paramedic, ambulance
 4 attendant, or other emergency responder who was engaged in the performance
 5 of official duties at the time of the offense, seven to 11 years;

6 **(B) and the conviction is for manufacturing related to**
 7 **methamphetamine under AS 11.71.020(a)(2)(A) or (B), seven to 11 years,**

8 **if**

9 **(i) the manufacturing occurred in a building with**
 10 **reckless disregard that the building was used as a permanent or**
 11 **temporary home or place of lodging for one or more children**
 12 **under 18 years of age or the building was a place frequented by**
 13 **children; or**

14 **(ii) in the course of manufacturing or in preparation**
 15 **for manufacturing, the defendant obtained the assistance of one or**
 16 **more children under 18 years of age or one or more children were**
 17 **present;**

18 (3) if the offense is a second felony conviction, 10 to 14 years;

19 (4) if the offense is a third felony conviction and the defendant is not
 20 subject to sentencing under (l) of this section, 15 to 20 years.

21 * **Sec. 13.** AS 12.55.125(d) is amended to read:

22 (d) Except as provided in (i) of this section, a defendant convicted of a class B
 23 felony may be sentenced to a definite term of imprisonment of not more than 10 years,
 24 and shall be sentenced to a definite term within the following presumptive ranges,
 25 subject to adjustment as provided in AS 12.55.155 - 12.55.175:

26 (1) if the offense is a first felony conviction and does not involve
 27 circumstances described in (2) of this subsection, one to three years; a defendant
 28 sentenced under this paragraph may, if the court finds it appropriate, be granted a
 29 suspended imposition of sentence under AS 12.55.085 if, as a condition of probation
 30 under AS 12.55.086, the defendant is required to serve an active term of imprisonment
 31 within the range specified in this paragraph, unless the court finds that a mitigation

1 factor under AS 12.55.155 applies;

2 (2) if the offense is a first felony conviction,

3 (A) the defendant violated AS 11.41.130, and the victim was a
4 child under 16 years of age, two to four years;

5 (B) two to four years if the conviction is for an attempt,
6 solicitation, or conspiracy to manufacture related to methamphetamine
7 under AS 11.31 and AS 11.71.020(a)(2)(A) or (B), and

8 (i) the attempted manufacturing occurred, or the
9 solicited or conspired offense was to have occurred, in a building
10 with reckless disregard that the building was used as a permanent
11 or temporary home or place of lodging for one or more children
12 under 18 years of age or the building was a place frequented by
13 children; or

14 (ii) in the course of an attempt to manufacture, the
15 defendant obtained the assistance of one or more children under 18
16 years of age or one or more children were present;

17 (3) if the offense is a second felony conviction, four to seven years;

18 (4) if the offense is a third felony conviction, six to 10 years.

19 * **Sec. 14.** AS 12.55.185 is amended by adding a new paragraph to read:

20 (19) "building" has the meaning given in AS 11.81.900.

21 * **Sec. 15.** AS 17.30 is amended by adding a new section to article 1 to read:

22 **Sec. 17.30.090. Sale or purchase of certain listed chemicals.** (a) A seller,
23 retailer, or vendor may not sell for personal use and a person may not purchase for
24 personal use ephedrine base, pseudoephedrine base, or phenylpropanolamine base, as
25 those terms are used in P.L. 109-177, 120 Stat. 192, unless that sale or purchase
26 complies with and meets the requirements of P.L. 109-177, 120 Stat. 192, with regard
27 to amounts, identification required, storage, access and availability, and logbooks. A
28 seller, retailer, or vendor shall maintain the logbook for the period required under P.L.
29 109-177, 120 Stat. 192, and shall allow law enforcement officers access to the
30 logbook. Each seller, retailer, and vendor shall provide training to the seller's,
31 retailer's, or vendor's employees and agents in the requirements of this section. The

1 Department of Public Safety shall provide assistance and information to sellers,
2 retailers, and vendors to meet the requirements of this section.

3 (b) A seller, retailer, or vendor may not sell to a person under 16 years of age
4 and a person under 16 years of age may not purchase a product or substance identified
5 in (a) of this section.

6 (c) Nothing in this section limits the authority of a seller, retailer, or vendor
7 regulated by this section to report to a law enforcement agency or officer suspicious
8 purchases of a chemical, product, or substance. A seller, retailer, or vendor is not
9 liable in a civil action for release of information to a law enforcement agency
10 concerning matters related to this section.

11 (d) A seller, retailer, or vendor does not violate this section if the seller,
12 retailer, or vendor proves by a preponderance of the evidence that the seller, retailer,
13 or vendor

14 (1) exercised the degree of care of a reasonable employer to ensure
15 compliance with (a) - (c) of this section; and

16 (2) determined that the employees and agents of the seller, retailer, or
17 vendor had been notified of the requirements of this section by

18 (A) securing each employee's or agent's written
19 acknowledgment of notification of those requirements; or

20 (B) making another appropriate determination.

21 (e) A person who violates this section shall forfeit and pay to the state a civil
22 penalty of not more than \$10,000 for each violation."
23

24 Renumber the following bill sections accordingly.
25

26 Page 3, following line 31:

27 Insert new bill sections to read:

28 **** Sec. 17.** AS 46.03.500 is amended by adding a new subsection to read:

29 (f) The department shall maintain on its Internet website a list of all properties
30 for which a notice has been issued under (a) of this section. For each of those
31 properties, the list must contain the parcel identification number, legal description, and

1 physical address and owner's name at the time the notice was issued.

2 * **Sec. 18.** AS 46.03.550(b) is amended to read:

3 (b) The department shall maintain a list of properties for which the department
4 has received notice under AS 46.03.500(c). When the department determines under (a)
5 of this section that a property on the list is fit for use, the department shall **note on the**
6 **list maintained on its Internet website under AS 46.03.500(f), and on any other**
7 **list or database it maintains related to illegal drug manufacturing sites, that the**
8 **property is fit for use** [REMOVE THE PROPERTY FROM THE LIST] and **shall**
9 notify the owner of the property that the property is fit for use. **The property shall**
10 **remain on the lists or databases for five years after it is determined that the**
11 **property is fit for use and shall be removed from the lists or databases within**
12 **three months after the five year period has elapsed.** On request, the department
13 shall give a copy of the list maintained under this section to any person who requests
14 the list."
15

16 Renumber the following bill sections accordingly.

17
18 Page 4, following line 2:

19 Insert a new bill section to read:

20 **** Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 **APPLICABILITY.** Sections 5 - 8 and 11 - 15 of this Act apply to offenses committed
23 on or after the effective date of this Act."
24

25 Renumber the following bill section accordingly.