

SENATE CS FOR CS FOR HOUSE BILL NO. 149(FIN) am S(ct rule fld S)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Amended: 1/19/06

Offered: 1/13/06

Sponsor(s): REPRESENTATIVES RAMRAS, Wilson, Lynn, McGuire, Gatto, Kelly, Foster, Holm, Stoltze, Elkins, Crawford, Meyer, Dahlstrom, Croft

SENATORS Wilken, Dyson

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to controlled substances; relating to the crimes of manslaughter,**
2 **endangering the welfare of a child, and misconduct involving a controlled substance;**
3 **relating to the manufacture of methamphetamine and to the sale, possession, and**
4 **delivery of certain substances and precursors used in the manufacture of**
5 **methamphetamine; relating to listing certain anabolic steroids as controlled substances;**
6 **and providing for an effective date."**

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

8 *** Section 1.** The uncoded law of the State of Alaska is amended by adding a new section
9 to read:

10 PURPOSE OF SECS. 7 - 10. The purpose of secs. 7 - 10 of this Act is to protect the
11 health and safety of persons in this state and to provide legislative findings concerning this
12 Act regarding marijuana and its effects in this state.

13 *** Sec. 2.** The uncoded law of the State of Alaska is amended by adding a new section to

1 read:

2 FINDINGS FOR SECS. 7 - 10. The type of marijuana available in the United States
3 and Alaska today, and the changes in the patterns of usage of the drug, particularly by young
4 Alaskans, Alaska Natives and those undergoing alcohol treatment, pose a threat to the public
5 health and welfare that justifies prohibiting possession in this state, even by adults at home. In
6 this Act, the legislature has considered its duty to implement the right to privacy in art. I, sec.
7 22, Constitution of the State of Alaska, and its duty to promote the public health and welfare
8 in art. VII, sec. 4, Constitution of the State of Alaska. The legislature has also considered its
9 obligation to carry out the intent of the voters of Alaska in recriminalizing marijuana by ballot
10 initiative in 1990, and in defeating ballot initiatives to again decriminalize marijuana in 2000
11 and 2004. To assist the courts in considering these issues, the legislature further finds that

12 (1) the potency of marijuana has increased dramatically since the 1960s and
13 1970s; the national average amount of delta-9-tetrahydrocannabinol (THC), the main
14 psychoactive ingredient, was less than one percent then, but increased steadily in the 1980s
15 and 1990s, and by 2003 was six times higher, at 6.4 percent; marijuana grown and available in
16 Alaska is much more potent than the national average, and has been tested with THC levels
17 over 20 percent; the average potency of Alaska marijuana for the period 1993-2003 was over
18 10 percent and for 2003 was nearly 14 percent; Alaska marijuana today commands hundreds
19 of dollars per ounce on the illegal market and is often sold in smaller amounts within the price
20 range of teenagers; the increasing potency of marijuana corresponds to an increase in
21 substance abuse treatment admissions, particularly youth 12 - 17 years of age, and in the
22 number of persons seeking emergency medical care due to marijuana-related incidents;

23 (2) several hundred adults and children are admitted into treatment each year
24 in Alaska for marijuana abuse, with more than half being children under 18 years of age;
25 pregnant women in Alaska use marijuana at a higher rate than the national average;

26 (3) there is evidence that many users become dependent on marijuana under
27 the clinical standards applied by the Diagnostic and Statistical Manual of Mental Disorders
28 IV; studies have shown that use of marijuana and withdrawal from marijuana affect some of
29 the same neurochemical processes as known addictive drugs; Marijuana Anonymous chapters
30 to treat marijuana addicts exist in a majority of states in the country. This is persuasive
31 evidence of marijuana's potential for users becoming dependent on it. Currently, one-third of

1 all persons in Alaska treated for drug and alcohol problems are treated for marijuana abuse;

2 (4) early exposure of young people to marijuana increases the likelihood of
3 lifelong health and social problems, makes it more likely that the person will later use more
4 potent illegal drugs, and is associated with depression and an increased risk of attempting
5 suicide;

6 (5) a high percentage of persons in treatment for alcohol abuse also abuse
7 marijuana; although the relationship between marijuana and alcohol and other drugs is not
8 fully understood, there is a correlative effect that makes it more difficult to treat alcoholism
9 when marijuana is also used;

10 (6) marijuana consists of hundreds of different chemicals and can affect
11 almost every organ and system in the body, including the lymph system, the heart, and the
12 lungs; THC binds to receptors in the brain that should otherwise bind to naturally occurring
13 brain chemicals; marijuana can affect memory, attention, judgment, and other cognitive
14 functions and can impair motor coordination, time perception, and balance; marijuana smoke
15 contains more carcinogenic hydrocarbons than tobacco smoke; marijuana often contains
16 bacteria or fungus that are dangerous to humans, and is harvested and sold without removing
17 pesticides and fungicides;

18 (7) a high percentage of persons arrested in this state, including adults and
19 juveniles who commit violent offenses, have marijuana in their system at the time of the
20 arrest; the percentage is particularly high for adults arrested for domestic violence who test
21 positive for marijuana at the time of the arrest;

22 (8) if a parent uses marijuana, their children are four to five times more likely
23 to become marijuana users; many high school students report that they have been able to get
24 marijuana at home or from a relative; criminal penalties for possession of marijuana in the
25 home will deter possession by adults and reduce its availability and accessibility to children;
26 studies have shown that criminal penalties for possession of marijuana are effective in
27 increasing the perception among teenagers of the risks of using the drug, thus reducing its use
28 by young people;

29 (9) in *Noy v. State*, 83 P.3d 538 (Alaska App. 2003), the Alaska court of
30 appeals allowed any person over 17 years of age to possess up to four ounces of marijuana in
31 their home; at the same time, the court held that possession of four ounces could legitimately

be prohibited even in the home because it was reasonable for the legislature to conclude in 1982 that possession of four ounces is indicative of an intent to sell; the street value of marijuana today is between \$350 and \$550 per ounce; the legislature heard evidence that possession of four ounces or more indicates an intent to distribute; and therefore this is the appropriate amount to justify a felony offense; the Noy decision also led the same court in Crocker v. State, 97 P.3d 93 (Alaska App. 2004) to invalidate search warrants for commercial marijuana-growing and, in the words of the dissenting chief judge, make it "difficult for the state to enforce legitimate laws prohibiting the sale and possession of marijuana."

* **Sec. 3.** AS 11.41.120(a) is amended to read:

(a) A person commits the crime of manslaughter if the person

(1) intentionally, knowingly, or recklessly causes the death of another person under circumstances not amounting to murder in the first or second degree;

[OR]

(2) intentionally aids another person to commit suicide; or

(3) knowingly manufactures or delivers a controlled substance in violation of AS 11.71.010 – 11.71.030 or 11.71.040(a)(1) for schedule IVA controlled substances, and a person dies as a direct result of ingestion of the controlled substance; the death is a result that does not require a culpable mental state; in this paragraph, "ingestion" means voluntarily or involuntarily taking a substance into the body in any manner.

* **Sec. 4.** AS 11.71.020(a) is amended to read:

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

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

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

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

or

(B) an immediate precursor of methamphetamine, or its salts,

1 isomers, or salts of isomers;

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

6 (4) possesses a listed chemical with intent to manufacture any material,
7 compound, mixture, or preparation that contains

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

9 or

10 (B) an immediate precursor of methamphetamine, or its salts,
11 isomers, or salts of isomer;

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

14 (6) under circumstances not proscribed under AS 11.71.010(a)(2),
15 delivers

16 (A) an immediate precursor of methamphetamine, or the
17 salts, isomers, or salts of isomers of the immediate precursor of
18 methamphetamine, to another person with reckless disregard that the
19 precursor will be used to manufacture any material, compound, mixture,
20 or preparation that contains methamphetamine, or its salts, isomers, or
21 salts of isomers; or

22 (B) a listed chemical to another person with reckless
23 disregard that the listed chemical will be used to manufacture any
24 material, compound, mixture, or preparation that contains

25 (i) methamphetamine, or its salts, isomers, or salts of
26 isomers;

27 (ii) an immediate precursor of methamphetamine, or
28 its salts, isomers, or salts of isomers; or

29 (iii) methamphetamine or its salts, isomers, or salts
30 of isomers in an organic solution.

31 * Sec. 5. AS 11.71.020 is amended by adding a new subsection to read:

(d) In a prosecution under (a) of this section, possession of more than six grams of the listed chemicals ephedrine, pseudoephedrine, phenylpropanolamine, the salts, isomers, or salts of isomers of those chemicals is prima facie evidence that the person intended to use the listed chemicals to manufacture, to aid or abet another person to manufacture, or to deliver to another person who intends to manufacture methamphetamine, its immediate precursors, or the salts, isomers, or salts of isomers of methamphetamine or its immediate precursors. The prima facie evidence described in this subsection does not apply to a person who possesses

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

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

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

(i) retailer or as a wholesaler;

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

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

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

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

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

* **Sec. 6.** AS 11.71.030(a) is amended to read:

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

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

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

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

(A) with reckless disregard that the possession occurs

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

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

or

(B) on a school bus.

* **Sec. 7.** AS 11.71.040(a) is amended to read:

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

(1) manufactures or delivers any amount of a schedule IVA or VA controlled substance or possesses any amount of a schedule IVA or VA controlled substance with intent to manufacture or deliver;

(2) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more containing a schedule VIA controlled substance;

(3) possesses

(A) any amount of a schedule IA or IIA controlled substance;

(B) 25 or more tablets, ampules, or syrettes containing a schedule IIIA or IVA controlled substance;

(C) one or more preparations, compounds, mixtures, or substances of an aggregate weight of three grams or more containing a schedule IIIA or IVA controlled substance;

(D) 50 or more tablets, ampules, or syrettes containing a

1 schedule VA controlled substance;

2 (E) one or more preparations, compounds, mixtures, or
3 substances of an aggregate weight of six grams or more containing a schedule
4 VA controlled substance;

5 (F) one or more preparations, compounds, mixtures, or
6 substances of an aggregate weight of **four ounces** [ONE POUND] or more
7 containing a schedule VIA controlled substance; or

8 (G) 25 or more plants of the genus cannabis;

9 (4) possesses a schedule IIIA, IVA, VA, or VIA controlled substance

10 (A) with reckless disregard that the possession occurs

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

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

13 or

14 (B) on a school bus;

15 (5) knowingly keeps or maintains any store, shop, warehouse,
16 dwelling, building, vehicle, boat, aircraft, or other structure or place that is used for
17 keeping or distributing controlled substances in violation of a felony offense under this
18 chapter or AS 17.30;

19 (6) makes, delivers, or possesses a punch, die, plate, stone, or other
20 thing **that** [WHICH] prints, imprints, or reproduces a trademark, trade name, or other
21 identifying mark, imprint, or device of another or any likeness of any of these upon a
22 drug, drug container, or labeling so as to render the drug a counterfeit substance;

23 (7) knowingly uses in the course of the manufacture or distribution of a
24 controlled substance a registration number that is fictitious, revoked, suspended, or
25 issued to another person;

26 (8) knowingly furnishes false or fraudulent information in or omits
27 material information from any application, report, record, or other document required
28 to be kept or filed under AS 17.30;

29 (9) obtains possession of a controlled substance by misrepresentation,
30 fraud, forgery, deception, or subterfuge; or

31 (10) affixes a false or forged label to a package or other container

1 containing any controlled substance.

2 * **Sec. 8.** AS 11.71.050(a) is amended to read:

3 (a) Except as authorized in AS 17.30, a person commits the crime of
4 misconduct involving a controlled substance in the fifth degree if the person

5 (1) manufactures or delivers, or possesses with the intent to
6 manufacture or deliver, one or more preparations, compounds, mixtures, or substances
7 of an aggregate weight of less than one [ONE-HALF] ounce [OR MORE] containing
8 a schedule VIA controlled substance;

9 (2) [MANUFACTURES OR DELIVERS, OR POSSESSES WITH
10 THE INTENT TO MANUFACTURE OR DELIVER, ONE OR MORE
11 PREPARATIONS, COMPOUNDS, MIXTURES, OR SUBSTANCES OF AN
12 AGGREGATE WEIGHT OF LESS THAN ONE-HALF OUNCE CONTAINING A
13 SCHEDULE VIA CONTROLLED SUBSTANCE, FOR REMUNERATION;

14 (3)] possesses

15 (A) less than 25 tablets, ampules, or syrettes containing a
16 schedule IIIA or IVA controlled substance;

17 (B) one or more preparations, compounds, mixtures, or
18 substances of an aggregate weight of less than three grams containing a
19 schedule IIIA or IVA controlled substance;

20 (C) less than 50 tablets, ampules, or syrettes containing a
21 schedule VA controlled substance;

22 (D) one or more preparations, compounds, mixtures, or
23 substances of an aggregate weight of less than six grams containing a schedule
24 VA controlled substance; or

25 (E) one or more preparations, compounds, mixtures, or
26 substances of an aggregate weight of one ounce [ONE-HALF POUND] or
27 more containing a schedule VIA controlled substance; or

28 **(3)** [(4)] fails to make, keep, or furnish any record, notification, order
29 form, statement, invoice, or information required under AS 17.30.

30 * **Sec. 9.** AS 11.71.060(a) is amended to read:

31 (a) Except as authorized in AS 17.30, a person commits the crime of

misconduct involving a controlled substance in the sixth degree if the person

(1) uses or displays any amount of a schedule VIA controlled substance;

(2) [OR] possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than **one ounce** [ONE-HALF POUND] containing a schedule VIA controlled substance;

or

(3) [(2)] refuses entry into a premise for an inspection authorized under AS 17.30.

* **Sec. 10.** AS 11.71.080 is amended to read:

Sec. 11.71.080. Aggregate weight of live marijuana plants. For purposes of calculating the aggregate weight of a live marijuana plant, the aggregate weight shall be **one-sixth of the measured** weight of the marijuana **plant after the roots of the marijuana plant have been removed** [WHEN REDUCED TO ITS COMMONLY USED FORM].

* **Sec. 11.** AS 11.71.180 is amended by adding a new subsection to read:

(f) Schedule VA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances, including their salts, esters, isomers, and salts of esters and isomers if those salts, esters, or isomers promote muscle growth, whenever the existence of these salts, esters, and isomers is possible within the specific chemical designation: anabolic steroids. In this subsection, "anabolic steroids" means any drug or hormonal substance that is chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) and that promotes muscle growth; "anabolic steroids" does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved by the United States Secretary of Health and Human Services for that administration, unless a person prescribes, dispenses, or distributes that type of anabolic steroid for human use; "anabolic steroids" includes the following:

(1) boldenone;

(2) chlorotestosterone (4-chlorotestosterone);

- (3) clostebol;
- (4) dehydrochlormethyltestosterone;
- (5) dihydrotestosterone (4-dihydrotestosterone);
- (6) drostanolone;
- (7) ethylestrenol;
- (8) fluoxymesterone;
- (9) formebulone (formebolone);
- (10) mesterolone;
- (11) methandienone;
- (12) methandranone;
- (13) methandriol;
- (14) methandrostenolone;
- (15) methenolone;
- (16) methyltestosterone;
- (17) mibolerone;
- (18) nandrolone;
- (19) norethandrolone;
- (20) oxandrolone;
- (21) oxymesterone;
- (22) oxymetholone;
- (23) stanolone;
- (24) stanozolol;
- (25) testolactone;
- (26) testosterone;
- (27) trenbolone.

* **Sec. 12.** AS 11.71 is amended by adding a new section to article 2 to read:

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

(1) ephedrine under AS 11.71.200(4);
 (2) pseudoephedrine under AS 11.71.200(13);
 (3) phenylpropanolamine under AS 11.71.200(11).
 (b) This section does not apply to a person who lawfully purchases or receives
 (1) more than six grams of a listed chemical identified in (a) of this
 section
 (A) that was dispensed to the person under a valid prescription;
 or
 (B) in the ordinary course of a legitimate business, or to an
 employee of a legitimate business, as a
 (i) retailer or as a wholesaler;
 (ii) wholesale drug distributor licensed by the Board of
 Pharmacy;
 (iii) manufacturer of drug products licensed by the
 Board of Pharmacy;
 (iv) pharmacist licensed by the Board of Pharmacy; or
 (v) a health care professional licensed by the state; or
 (2) more than six but less than 24 grams of a listed chemical identified
 in (a) of this section in the ordinary course of a legitimate business or nonprofit
 organization, or as an employee of a legitimate business or nonprofit organization,
 operating a camp, lodge, school, day care center, treatment center, or other organized
 group activity, and the location or nature of the activity, or the age of the participants,
 makes it impractical for the participants in the activity to obtain medicinal products.
 (c) Purchase or receipt of restricted amounts of certain listed chemicals is a
 class C felony.

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

(b) In addition to conditions the court may impose under (a) of this section and
 notwithstanding other provisions in this chapter, if the defendant is charged with
 manufacturing methamphetamine under AS 11.71.020(a)(2), unless the defendant
 proves to the satisfaction of the court that the defendant's only role in the offense was
 as an aider or abettor and that the defendant did not stand to benefit financially from

1 the manufacturing, the court shall require the posting of a minimum of \$250,000 cash
 2 bond if the defendant has previously been convicted in this or another jurisdiction of
 3 manufacturing, delivering, or possessing methamphetamine.

4 * **Sec. 14.** AS 12.55.125(c) is amended to read:

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

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

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

12 (A) and the defendant possessed a firearm, used a dangerous
 13 instrument, or caused serious physical injury or death during the commission
 14 of the offense, or knowingly directed the conduct constituting the offense at a
 15 uniformed or otherwise clearly identified peace officer, fire fighter,
 16 correctional employee, emergency medical technician, paramedic, ambulance
 17 attendant, or other emergency responder who was engaged in the performance
 18 of official duties at the time of the offense, seven to 11 years;

19 (B) and the conviction is for manufacturing related to
 20 methamphetamine under AS 11.71.020(a)(2)(A) or (B), seven to 11 years,
 21 if

22 (i) the manufacturing occurred in a building with
 23 reckless disregard that the building was used as a permanent or
 24 temporary home or place of lodging for one or more children
 25 under 18 years of age or the building was a place frequented by
 26 children; or

27 (ii) in the course of manufacturing or in preparation
 28 for manufacturing, the defendant obtained the assistance of one or
 29 more children under 18 years of age or one or more children were
 30 present;

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

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

* **Sec. 15.** AS 12.55.125(d) is amended to read:

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

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, one to three years; a defendant sentenced under this paragraph may, if the court finds it appropriate, be granted a suspended imposition of sentence under AS 12.55.085 if, as a condition of probation under AS 12.55.086, the defendant is required to serve an active term of imprisonment within the range specified in this paragraph, unless the court finds that a mitigation factor under AS 12.55.155 applies;

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

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

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

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

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

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

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

1 * **Sec. 16.** AS 12.55.135 is amended by adding a new subsection to read:

2 (k) A court may not impose a sentence of imprisonment or suspended
3 imprisonment for possession of marijuana in violation of AS 11.71.060 if the
4 defendant alleges, and the court finds, that the defendant was not under formal or
5 informal probation or parole conditions in this or another jurisdiction at the time of the
6 offense; that the defendant possessed the marijuana for the defendant's personal use
7 within the defendant's permanent or temporary residence; and that the defendant has
8 not been previously convicted more than once in this or another jurisdiction for
9 possession of marijuana. If the defendant has not been previously convicted as
10 described in this subsection, the maximum unsuspended fine that the court may
11 impose is \$500. If the defendant has been previously convicted once as described in
12 this subsection, the maximum unsuspended fine that the court may impose is \$1,000.
13 In this subsection,

14 (1) "permanent or temporary residence" means a permanent structure
15 adopted for overnight accommodation; "permanent or temporary residence" does not
16 include

17 (A) vehicles, tents, prisons or other correctional facilities,
18 residential treatment facilities, or shelters operated by a charitable organization
19 or a government agency;

20 (B) any place where the defendant's possession or use of
21 marijuana violated established rules for residents, such as a ban on smoking or
22 a ban on marijuana or other controlled substances;

23 (2) "previously convicted" means the defendant entered a plea of
24 guilty, no contest, or nolo contendere, or has been found guilty by a court or jury,
25 regardless of whether the conviction was set aside under AS 12.55.085 or a similar
26 procedure in another jurisdiction, of possession of marijuana; "previously convicted"
27 does not include a judgment that has been reversed or vacated by a court.

28 * **Sec. 17.** AS 12.55.185 is amended by adding a new paragraph to read:

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

30 * **Sec. 18.** AS 17.30 is amended by adding a new section to article 1 to read:

31 **Sec. 17.30.090. Sale or dispensation of certain listed chemicals.** (a) If a

1 product or substance contains ephedrine, pseudoephedrine, or phenylpropanolamine,
 2 or their salts, isomers, or salts of isomers, or iodine or crystal iodine, a retailer or
 3 employee or agent of a retailer may not sell, deliver, dispense, distribute, or in any
 4 manner furnish the product or substance to a person unless the retailer or employee or
 5 agent of the retailer confirms the identity of the person by current and valid
 6 government-issued photo identification.

7 (b) If a product or substance contains, as the sole active ingredient, ephedrine,
 8 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers,
 9 or contains iodine or crystal iodine, a retailer or employee or agent of a retailer may
 10 not offer to sell, deliver, dispense, distribute, or in any manner furnish the product or
 11 substance unless it is displayed behind a service counter so it is not accessible to the
 12 public or is kept in a secure cabinet or storage area not accessible to the public. The
 13 commissioner of public safety may issue a regulation, including an emergency
 14 regulation, with an immediate effective date, that requires other products or substances
 15 containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,
 16 isomers, or salts of isomers to be subject to the requirements of this subsection by
 17 naming the product or substance by brand when the commissioner finds that the
 18 product or substance named in the regulation has been found in connection with illegal
 19 manufacture of methamphetamine in this state and presents a risk of further diversion
 20 to the illegal manufacture of methamphetamine if not subject to the requirements of
 21 this subsection. An emergency regulation adopted under this subsection is not subject
 22 to challenge under AS 44.62.300(2). A court reviewing an emergency regulation under
 23 AS 44.62.300 may not grant a temporary restraining order or injunction restraining or
 24 enjoining the enforcement of the regulation. An emergency regulation adopted under
 25 this subsection is subject to AS 44.62.260.

26 (c) A retailer or employee or agent of a retailer may not sell, deliver, dispense,
 27 distribute, or in any manner furnish a product or substance containing, ephedrine,
 28 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers,
 29 or iodine or crystal iodine, to a person who is under 18 years of age unless the person
 30 is an emancipated minor or a member of the military.

31 (d) Nothing in this section limits the authority of a retailer or employee or

1 agent of a retailer regulated by this section to report to a law enforcement agency or
 2 officer suspicious purchases of a chemical, product, or substance. A retailer or
 3 employee or agent of a retailer is not liable in a civil action for release of information
 4 to a law enforcement agency concerning matters related to this section.

5 (e) A retailer does not violate this section if the retailer proves by a
 6 preponderance of the evidence that the retailer

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

9 (2) determined that the employees and agents of the retailer had been
 10 notified of the requirements of this section by

11 (A) securing the employee's or agent's written acknowledgment
 12 of notification of those requirements; or

13 (B) making another appropriate determination.

14 (f) A person who violates (a), (b), or (c) of this section shall forfeit and pay to
 15 the state a civil penalty of not more than \$10,000 for each violation.

16 (g) In this section,

17 (1) "agent" has the meaning given in AS 11.71.900;

18 (2) "deliver" has the meaning given in AS 11.71.900;

19 (3) "dispense" has the meaning given in AS 11.71.900;

20 (4) "distribute" has the meaning given in AS 11.71.900;

21 (5) "retailer" means a person, whether in this state or outside the state,
 22 who deals with a product or substance described in (a) of this section, by selling,
 23 delivering, dispensing, distribution, or in any manner furnishing the product or
 24 substance to a person in this state who is the ultimate user or consumer of the product
 25 or substance; "retailer" does not include a practitioner as defined in AS 11.71.900, but
 26 does include a pharmacy.

27 * **Sec. 19.** AS 46.03.500 is amended by adding a new subsection to read:

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

1 * **Sec. 20.** AS 46.03.550(b) is amended to read:

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

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

16 APPLICABILITY. For purposes of AS 12.55.135(k), enacted by sec. 16 of this Act,
 17 "previously convicted" includes convictions as described in those provisions whether the
 18 convictions occurred before, on, or after the effective date of this Act.

19 * **Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to
 20 read:

21 APPLICABILITY. Sections 1 - 18 and 21 of this Act apply to offenses committed on
 22 or after the effective date of this Act.

23 * **Sec. 23.** This Act takes effect immediately under AS 01.10.070(c).