

SENATE BILL NO. 106

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY SENATORS GUESS, Ellis, Elton, Dyson, Kookesh

Introduced: 2/14/05

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to sale, possession, and delivery of certain substances and precursors**
2 **used in the unlawful manufacture of methamphetamine."**

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

4 *** Section 1.** AS 11.71.020(a) is amended to read:

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

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

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

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

13 or

14 (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; **or**

12 **(5) under circumstances not proscribed under AS 11.71.010(a)(2),**
13 **delivers**

14 **(A) an immediate precursor of methamphetamine, or the**
15 **salts, isomers, or salts of isomers of the immediate precursor of**
16 **methamphetamine, to another person if the person knows that the other**
17 **person intends to use the precursor to manufacture any material,**
18 **compound, mixture, or preparation that contains methamphetamine, or**
19 **its salts, isomers, or salts of isomers; or**

20 **(B) a listed chemical to another person if the person knows**
21 **that the other person intends to use the chemical to manufacture any**
22 **material, compound, mixture, or preparation that contains**

23 **(i) methamphetamine, or its salts, isomers, or salts of**
24 **isomers; or**

25 **(ii) an immediate precursor of methamphetamine, or**
26 **its salts, isomers, or salts of isomers.**

27 * **Sec. 2.** AS 11.71.020 is amended by adding a new subsection to read:

28 (d) In a prosecution under (a) of this section, possession of nine grams or more
29 of the listed chemical pseudoephedrine, its salts, optical isomers, or salts of optical
30 isomers is prima facie evidence that the person intended to use the listed chemical to
31 manufacture methamphetamine or to assist another person to manufacture

1 methamphetamine. The prima facie evidence described in this subsection does not
 2 apply to a person who possesses the listed chemical in the ordinary course of a
 3 legitimate business as a

- 4 (1) retail distributor of drug products or as a wholesaler;
- 5 (2) wholesale drug distributor licensed by the Board of Pharmacy;
- 6 (3) manufacturer of drug products licensed by the Board of Pharmacy;
- 7 (4) pharmacist licensed by the Board of Pharmacy; or
- 8 (5) a health care professional licensed by the state.

9 * **Sec. 3.** AS 11.71.030(a) is amended to read:

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

12 (1) under circumstances not proscribed under AS 11.71.020(a)(2) - (5)
 13 [AS 11.71.020(a)(2) - (4)], manufactures or delivers any amount of a schedule IIA or
 14 IIIA controlled substance or possesses any amount of a schedule IIA or IIIA controlled
 15 substance with intent to manufacture or deliver;

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

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

20 (A) with reckless disregard that the possession occurs

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

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

23 or

24 (B) on a school bus.

25 * **Sec. 4.** AS 11.71 is amended by adding a new section to article 2 to read:

26 **Sec. 11.71.210. Possession or purchase of restricted amounts of certain**
 27 **listed chemicals.** (a) A person commits the crime of possession or purchase of
 28 restricted amounts of certain listed chemicals if the person purchases or receives more
 29 than nine grams of the following listed chemical, its salts, optical isomers, or salts of
 30 optical isomers within any 30-day period: pseudoephedrine under AS 11.71.200(13).

31 (b) This section does not apply to a person who lawfully possesses more than

1 nine grams of a listed chemical identified in (a) of this section

2 (1) that was dispensed to the person under a valid prescription;

3 (2) if the listed chemical is in liquid, liquid capsule, or gel capsule
4 form and the listed chemical in (a) of this section is not the only active ingredient; or

5 (3) in the ordinary course of a legitimate business as a

6 (A) retail distributor of drug products or as a wholesaler;

7 (B) wholesale drug distributor licensed by the Board of
8 Pharmacy;

9 (C) manufacturer of drug products licensed by the Board of
10 Pharmacy;

11 (D) pharmacist licensed by the Board of Pharmacy; or

12 (E) a health care professional licensed by the state.

13 (c) Possession or purchase of restricted amounts of certain listed chemicals is
14 a class C felony.

15 * **Sec. 5.** AS 17.30 is amended by adding a new section to article 1 to read:

16 **Sec. 17.30.090. Dispensation of and registration and record requirements**
17 **for certain listed chemicals.** (a) A wholesaler, manufacturer, or distributor of drug
18 products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their
19 salts, optical isomers, or salts of optical isomers, shall obtain a registration annually
20 from the Department of Public Safety. Each wholesaler, manufacturer, or distributor
21 shall keep complete records of all transactions involving those drug products,
22 including the names of all parties involved in the transaction and the amount of the
23 drug products involved. The records shall be kept readily retrievable and separate
24 from all other invoices or records of transactions not involving those drug products
25 and shall be maintained for not less than three years.

26 (b) A dispenser of a product or substance that contains a detectable quantity of
27 pseudoephedrine, or its salts, optical isomers, or salts of optical isomers, may not
28 dispense the substance unless the dispenser confirms the identity of the person by legal
29 photo identification and the dispenser requires the purchaser to sign a written log or
30 receipt showing the date of the transaction, name of the purchaser, and the amount
31 dispensed. A dispenser of a product or substance that contains a detectable quantity of

1 pseudoephedrine, or its salts, optical isomers, or salts of optical isomers, shall transmit
 2 to a central repository designated by the Department of Public Safety the following
 3 information for each dispensation:

4 (1) the recipient's name and the type of identification used to confirm
 5 the identity;

6 (2) the recipient's identification number;

7 (3) the National Drug Code number of the substance dispensed;

8 (4) the date of the dispensation;

9 (5) the quantity of the substance dispensed;

10 (6) the prescriber's federal Drug Enforcement Administration
 11 registration number if applicable; and

12 (7) the dispenser's registration number.

13 (c) The information required by (b) of this section shall be transmitted

14 (1) on an electronic device that is compatible with the receiving device
 15 of the central repository or by computer diskette, magnetic tape, CD-ROM, or in a
 16 format or other media designated acceptable by the Department of Public Safety; and

17 (2) within 30 days after the time that the substance is dispensed.

18 (d) In this section,

19 (1) "distributor" means a person in the state or another state, other than
 20 a manufacturer or wholesaler, who sells, delivers, transfers, or in any manner furnishes
 21 a drug product described in (a) of this section to a person who is not the ultimate user
 22 or consumer of the product;

23 (2) "manufacturer" means a person in the state who produces,
 24 compounds, packages, or in any manner initially prepares for sale or use a drug
 25 product described in (a) of this section, or a person in another state if the person causes
 26 the products to be compounded in, packaged in, or transported to this state;

27 (3) "readily retrievable" means available for inspection without prior
 28 notice at the registration address if that address is in the state; if the registration
 29 address is outside the state, "readily retrievable" means records must be furnished
 30 within three working days by courier, facsimile, mail, or electronic mail;

31 (4) "wholesaler" means a person in the state or another state, other than

1 a manufacturer, who sells, transfers, or in any manner furnishes a drug product
2 described in (a) of this section to another person in the state for the purpose of being
3 resold.

4 (e) Violation of this section is a class A misdemeanor, punishable upon
5 conviction only by a fine in an amount not to exceed \$10,000.

6 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 **APPLICABILITY.** The reporting requirements of AS 17.30.090, added by sec. 5 of
9 this Act, do not apply until the Department of Public Safety adopts regulations for the
10 reporting of sales of a product or substance containing a detectable quantity of
11 pseudoephedrine, or its salts, optical isomers, or salts of optical isomers.