

HB

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Luckhaupt✓
3/8/99

CS FOR HOUSE BILL NO. 3()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE BRICE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to controlled substances and to the possession of certain
2 chemicals."

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
11 that contains

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

13 isomers; or

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

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salts, isomers, or salts of isomers;

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

(4) possesses a listed chemical with intent to manufacture 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, isomers, or salts of isomer.

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

(c) In this section, "listed chemical" means a chemical described under AS 11.71.200.

* Sec. 3. 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) - (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.

1 * Sec. 4. AS 11.71.195 is amended to read:

2 **Sec. 11.71.195. Exempted drugs.** Except as otherwise provided in this
3 chapter, a [A] substance the manufacture, distribution, dispensing, or possession of
4 which is explicitly exempt from criminal penalty under federal law is exempt from the
5 application of this chapter and AS 17.30. This exemption includes any substances that
6 [WHICH] may, under 21 U.S.C. 301-392 (Food, Drug, and Cosmetic Act), be lawfully
7 sold over the counter without a prescription. This exemption also includes those
8 substances listed in 21 C.F.R. Sec. 1308.22 on April 1, 1980.

9 * Sec. 5. AS 11.71 is amended by adding a new section to article 2 to read:

10 **Sec. 11.71.200. Listed chemicals.** Listed chemicals are chemicals that are
11 used in manufacturing a controlled substance in violation of AS 11.71. Listed
12 chemicals include

- 13 (1) anthranilic acid, its esters, and its salts;
14 (2) benzaldehyde;
15 (3) benzyl cyanide;
16 (4) ephedrine, its salts, optical isomers, and salts of optical isomers;
17 (5) ergonovine and its salts;
18 (6) ergotamine and its salts;
19 (7) N-acetylanthranilic acid, its esters, and its salts;
20 (8) nitroethane;
21 (9) norpseudoephedrine, its salts, optical isomers, and salts of optical
22 isomers;
23 (10) phenylacetic acid, its esters, and its salts;
24 (11) phenylpropanolamine, its salts, optical isomers, and salts of optical
25 isomers;
26 (12) piperidine and its salts;
27 (13) pseudoephedrine, its salts, optical isomers, and salts of optical
28 isomers;
29 (14) 3,4-methylenedioxyphenyl-2-propanone;
30 (15) any salt, optical isomer, or salt of an optical isomer of the
31 following chemicals:

- 1 (A) ethylamine;
- 2 (B) hydriodic acid;
- 3 (C) isosafrole;
- 4 (D) methylamine;
- 5 (E) N-methylephedrine;
- 6 (F) N-methylpseudoephedrine;
- 7 (G) piperonal;
- 8 (H) propionic anhydride;
- 9 (I) safrole;
- 10 (16) acetic anhydride;
- 11 (17) acetone;
- 12 (18) anhydrous ammonia;
- 13 (19) benzyl chloride;
- 14 (20) ethyl ether;
- 15 (21) hydriotic acid;
- 16 (22) hydrochloric gas;
- 17 (23) hydrophosphoric acid;
- 18 (24) iodine and crystal iodine;
- 19 (25) lithium metal;
- 20 (26) potassium permanganate;
- 21 (27) red phosphorous;
- 22 (28) toluene;
- 23 (29) 2-butanone (or methyl ethyl ketone).

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8 substance or possesses any amount of a schedule IA controlled substance with intent
9 to manufacture or deliver;

10 (2) manufactures, or possesses with intent to manufacture, any
11 material, compound, mixture, or preparation that contains

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

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

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salts, isomers, or salts of isomers; or

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

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

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(1) under circumstances not proscribed under AS 11.71.020(a)(2) or (3), 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

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Sec. 11.71.195. Exempted drugs. Except as otherwise provided in this chapter, a [A] substance the manufacture, distribution, dispensing, or possession of which is explicitly exempt from criminal penalty under federal law is exempt from the application of this chapter and AS 17.30. This exemption includes any substances that

1 [WHICH] may, under 21 U.S.C. 301-392 (Food, Drug, and Cosmetic Act), be lawfully
2 sold over the counter without a prescription. This exemption also includes those
3 substances listed in 21 C.F.R. Sec. 1308.22 on April 1, 1980.

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5 **Sec. 11.71.200. Listed chemicals.** Listed chemicals include

- 6 (1) anthranilic acid, its esters, and its salts;
7 (2) benzaldehyde;
8 (3) benzyl cyanide;
9 (4) ephedrine, its salts, optical isomers, and salts of optical isomers;
10 (5) ergonovine and its salts;
11 (6) ergotamine and its salts;
12 (7) N-acetylanthranilic acid, its esters, and its salts;
13 (8) nitroethane;
14 (9) norpseudoephedrine, its salts, optical isomers, and salts of optical
15 isomers;
16 (10) phenylacetic acid, its esters, and its salts;
17 (11) phenylpropanolamine, its salts, optical isomers, and salts of optical
18 isomers;
19 (12) piperidine and its salts;
20 (13) pseudoephedrine, its salts, optical isomers, and salts of optical
21 isomers;
22 (14) 3,4-methylenedioxyphenyl-2-propanone;
23 (15) any salt, optical isomer, or salt of an optical isomer of the
24 following chemicals:
25 (A) ethylamine;
26 (B) hydriodic acid;
27 (C) isosafrole;
28 (D) methylamine;
29 (E) N-methylephedrine;
30 (F) N-methylpseudoephedrine;
31 (G) piperonal;

- 1 (H) propionic anhydride;
- 2 (I) safrole;
- 3 (16) acetic anhydride;
- 4 (17) acetone;
- 5 (18) benzyl chloride;
- 6 (19) ethyl ether;
- 7 (20) hydrochloric gas;
- 8 (21) iodine;
- 9 (22) potassium permanganate;
- 10 (23) toluene;
- 11 (24) 2-butanone (or methyl ethyl ketone).



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NONPRESCRIPTION DRUG MANUFACTURERS ASSOCIATION

**NDMA
Proposed Amendment to Alaska HB 3**

Proposed amendment to Alaska HB 3, An Act relating to controlled substances and to the possession and distribution of certain chemicals.

Strike Section 11.71.195 (Exempted Drugs) in its entirety.
[page 2, lines 2 through 8]

Add (d) to Section 17.30.090:

(d) The provisions of Section 17.30.090 (a)-(c) shall not apply to any substance that may be lawfully sold over the counter without a prescription under the federal Food, Drug and Cosmetic Act (21 U.S.C. 301-392).

Explanation: By including OTC exemption language in Section 17.30.090, and deleting Section 11.71.195, the proposed criminal penalty provisions in HB 3 will be applicable to OTC products while exempting these legitimate products from the reporting requirements.

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NONPRESCRIPTION DRUG MANUFACTURERS ASSOCIATION

Nonprescription Drug Manufacturers Association¹
Position Paper

**Restrictions on Possession of
Precursor Substances With Intent
to Manufacture Methamphetamine**

The epidemic of methamphetamine abuse is a growing problem across this country. Methamphetamine is a highly addictive and dangerous substance, causing violent behavior, psychosis, and delusions among its abusers. Unfortunately, in addition to the large quantities of this substance that are smuggled into the United States from Mexico, drug dealers have also learned how to acquire otherwise legitimate chemicals and convert these products into methamphetamine. Among the precursor chemicals that are diverted for this illicit activity are the active ingredients in most over-the-counter cough/cold, allergy, sinus and asthma medicines. Ephedrine, pseudoephedrine and phenylpropanolamine (PPA) are safe and effective ingredients in these medications that are approved by the Food & Drug Administration and relied upon by millions of consumers but, when added to the deadly mix of other compounds, these chemicals can be converted into methamphetamine.

Alaska House Bill 3, with NDMA's proposed amendment, would make unlawful the possession of ephedrine, pseudoephedrine or PPA with the intent to manufacture methamphetamine or other dangerous drugs. It criminalizes such possession of the precursor materials while also recognizing that possession of ephedrine, pseudoephedrine and PPA for other uses (like treating a cold, allergy or flu) is hardly criminal behavior. This legislation does *not interfere* with retail sales of normal consumer quantities of these nonprescription medicines but allows law enforcement to respond when other circumstances and evidence establish the likelihood that these drugs are being diverted to create an illicit substance. Law enforcement officials have indicated the need to be able to prevent illicit production of methamphetamine by charging people who possess large quantities of these precursor materials or certain drug paraphernalia for the creation of methamphetamine even before the transformation process has begun.

¹ The Nonprescription Drug Manufacturers Association (NDMA) is the 118-year-old trade association which represents manufacturers -- both large and small -- of nonprescription or over-the-counter (OTCs) medicines such as cold remedies, antacids, pain relievers, and many others. The Association's members account for approximately 95 percent of all OTC medicines sold in the United States. A nonprescription drug is one that the U.S. Food and Drug Administration has found to be safe and effective for direct consumer use based on the required label directions and warnings.

Page 2

Arkansas, California, Idaho, Illinois, Iowa, Minnesota, Missouri, Montana, North Carolina and Washington have already enacted laws that punish those with intent to manufacture methamphetamine while still allowing retailers to make these products available to legitimate consumers. Like those laws, Alaska House Bill 3 would punish wrongdoers, give law enforcement an additional tool to prevent methamphetamine production, and distinguish between legitimate use of over-the-counter medicines and diversion activities. It would attack methamphetamine production without burdening legitimate consumers. NDMA would support House Bill 1087 with the inclusion of NDMA's proposed amendment.

NDMA/smm/s 2/16/99



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NONPRESCRIPTION DRUG MANUFACTURERS ASSOCIATION

NDMA¹ RESPONSIBILITIES UNDER THE COMPREHENSIVE METHAMPHETAMINE CONTROL ACT

The federal Comprehensive Methamphetamine Control Act of 1996 (MCA) was enacted in response to the increased production and abuse of methamphetamine in the United States. The MCA imposed stringent requirements upon the sale or transfer of products containing precursor chemicals but also created a retail exemption for sales of "safe harbor" packaged products. Safe harbor packages are those containing pseudoephedrine and phenylpropanolamine with 3 grams or less in each package and no more than 2 tablets in each blister of the package. Liquid products, such as cough medicine, containing under 3 grams of pseudoephedrine or phenylpropanolamine are also considered safe harbored products.

Under the MCA, retailers and distributors must adhere to strict requirements imposed on sales of products containing ephedrine, pseudoephedrine and phenylpropanolamine. Retailers who sell only safe harbor products directly to consumers for personal use are exempted from the recordkeeping, registration and reporting requirements of the MCA.

Distributors

REPORTING: There are no periodic reporting requirements for distributors. However, distributors must report any and all "suspicious orders" to DEA before completion of the sale or as soon as possible thereafter. A suspicious order is described as a transaction involving an extraordinary quantity of a precursor chemical, a transaction involving an uncommon method of payment or delivery, or any other types of sales that would indicate that the purchased product will be used to manufacture illicit controlled substances

RECORDS: The distributor must keep records of all sales that exceed distributor threshold amounts set by the MCA. The safe harbor exemption does not apply to distributor transactions. The thresholds are calculated by the amount a customer purchases cumulatively over the course of a month. For single entity ephedrine, there is no threshold and the distributor must keep a record for all sales. For combination ephedrine and pseudoephedrine, the threshold is 1 kilogram each and for phenylpropanolamine, the threshold is 2.5 kilograms. These records must be kept for 2 years and be available for inspection.

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**MCA RESPONSIBILITIES
PAGE 2 OF 2**

REGISTRATION: If not already registered with DEA as a controlled substance registrant, the distributor must obtain a list chemical registration from DEA. Persons applying for a DEA controlled substance or list chemical registration must provide detailed background information before receiving the registration and DEA personnel must also inspect the distribution facility or warehouse prior to issuing the registration.

IDENTIFICATION: The distributor must verify and know the purchaser's identity, no matter the amount of product purchased (one box or many cases). Proof of identity would include a valid driver's license or other photo identification.

SECURITY: The distributor must provide adequate security against theft or diversion of drug products containing precursor chemicals. They must "exercise caution" in screening employees who will have access to these products and inform the employees of their responsibility to report information on diversion by a fellow employee to the distributor's security personnel.

Retailers

Retailers who sell only safe harbor products directly to consumers for personal use are exempted from the recordkeeping, registration and reporting requirements of the MCA.

For those retailers selling products not covered by the MCA's safe harbor exemption, they must keep a record of all sales over 24 grams.

Although exempted by the MCA, many retailers have chosen to implement a variety of control measures to reduce diversion of legitimate products. These measures include voluntary reporting of suspicious transactions, employee education programs and voluntary limits on sales.

NDMA/NAB/s

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 3

Revision Date/Time (Note if correction) _____	Dept. Affected	Law
Title <u>"An Act relating to controlled substances and</u>	BRU	<u>Criminal Division</u>
<u>to the possession and distribution of certain chemicals."</u>	Component	<u>1st-4th Jud Dist, Crim Apps/Spec Lit</u>
Sponsor <u>Representative Brice</u>	Component Serial No.	<u>2198-99/226179/01/03</u>
Requester <u>House Judiciary Committee</u>		

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 3 creates a new crime of "possession of a listed chemical" if the listed chemical is intended for the manufacture of a controlled substance. For example, under this bill, chemicals that can be used in the manufacture of methamphetamines would be listed. Depending on the chemical, commission of the new crime would be a class A or class B felony. The bill further requires anyone distributing listed chemicals to positively identify with a picture identification the person receiving the chemical, and report to the Commissioner of the Department of Public Safety certain information about the individual and the chemical.

Passage of this bill is not anticipated to have a fiscal impact on the Department of Law. The department already has the ability to prosecute most instances of manufacture of a controlled substance under existing law.

Prepared by <u>Joan M. Kasson</u> <i>Joan M. Kasson</i>	Phone <u>465-5370</u>
Division <u>Attorney General's Office</u>	Date/Time <u>2/16/99, 12:31 PM</u>
Approved by Commissioner <u>Katherine Brice</u> <i>Katherine Brice</i>	Date <u>2/16/99</u>
Agency <u>Department of Law</u>	

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FEB 16 1999 10:52 P.M.

Public Safety Employees Association, Inc.
"Representing Alaska's Finest!"

February 16, 1999

Honorable Representative Tom Brice
State Capitol
Juneau, AK 99801-1182

Re: House Bill 3

Dear Representative Brice:

Thank you for sponsoring House Bill 3. This legislation establishes a felony crime for those who possess certain chemicals with the intent to manufacture schedule IA, IIA, IIIA, IVA or VA drugs.

The Public Safety Employees Association fully supports this bill and advocates its quick passage so that Alaska's law enforcement officers can charge people who are using these dangerous chemicals to make methamphetamine and or other illegal drugs.

This important tool will allow officers to apprehend and deter methamphetamine traffickers and ensure our neighborhoods are safer places to live.

Please call us if you need any assistance in passing this bill. We have members who are involved with drug enforcement and who, on behalf of PSEA, would gladly testify as to the importance of this legislation.

Sincerely,



Keith Perrin
Business Manager



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NONPRESCRIPTION DRUG MANUFACTURERS ASSOCIATION

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DATE: 2/17/99

TO: Rep. Pete Kott (907) 465-2819

FROM: Steven M. Mister, Associate General Counsel & Deputy Director of
Government Relations

NUMBER OF PAGES: 4 (including this cover page)

MESSAGE: _____

NIDMA Model Act attached.

If there is a transmission problem, please contact Jodi at 202-429-9260.

Nonprescription Drug Manufacturers Association
Proposed Model State Legislation:

**Restrictions on
Possession, Sale & Marketing
of Precursors To Methamphetamine**

Instead of
lists ↓

(1) **Possession For Illicit Purposes Prohibited.** It shall be unlawful for a person to possess ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product as a precursor to any illegal substance. A violation of this section shall be a Class ___ [misdemeanor/felony] punishable by _____.

(2) **Sales For Illicit Purposes Prohibited.** It shall be unlawful for any person to sell, distribute, or otherwise make available any product containing ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers if the person knows that the purchaser will use the product as a precursor to any illegal substance. A violation of this section shall be a Class ___ [misdemeanor/felony] punishable by _____.

(3) **Effective Date.** This law shall become effective on _____.

*Nonprescription Drug Manufacturers Association
Explanation & Rationale for Model Legislation:*

**Restrictions on Marketing of Precursor Chemicals
and the Possession of Those Substances With Intent
to Manufacture Methamphetamine**

The Nonprescription Drug Manufacturers Association (NDMA) has developed model legislation for states seeking to place restrictions on certain kinds of nonprescription medicines that can be diverted and used for the illicit production of methamphetamine.

This model legislation responds to the increasing reports that some drug traffickers are diverting large quantities of ephedrine, pseudoephedrine or phenylpropanolamine (PPA) as raw precursors to the production of methamphetamine, a highly dangerous and illicit drug. At the same time, this model legislation recognizes that all three chemicals have legitimate therapeutic uses and are approved by FDA as safe and effective over-the-counter medications. Millions of consumers depend on these products for relief from everyday problems like flu, common colds, hay fever, allergies, mild asthma attacks and sinus conditions. Over broad or draconian restrictions on these products would deny consumers access to these products and drive up health care costs.

Section 1: Criminal Sanctions for the Possession of Certain Precursor Chemicals With Intent to Make Illicit Drugs

Section 1 makes unlawful the possession of ephedrine, pseudoephedrine or PPA with the intent to manufacture methamphetamine. The federal Drug Enforcement Administration (DEA) has determined that all three of these chemicals can be used in large quantities to produce methamphetamine, an illicit drug. A recently-enacted federal law will require registration and reporting of manufacturers and wholesale distributors of these drugs and will establish strong, new penalties for possession of Ameth.

Nevertheless, state law enforcement officials have indicated a need to be able to prevent illicit production of Ameth by charging people who possess large quantities of the precursor materials or certain paraphernalia for the creation of Ameth even before the transformation process has begun. Section 1 criminalizes such possession of the precursor materials while also recognizing that possession of ephedrine, pseudoephedrine and PPA for other uses (like treating a cold or flu) is hardly criminal behavior. This provision permits continued retail sale of normal consumer quantities of these nonprescription medicines but allows law enforcement to respond when other circumstances and evidence establish the likelihood that these drugs are being diverted to create an illicit substance.

Arkansas, California, Iowa, Missouri, Montana and Washington have enacted similar laws.

Section 2: Prohibiting the Sale of Certain Precursor Chemicals With Knowledge that They Will be Used to Make Illicit Drugs

This section prohibits the sale of ephedrine, pseudoephedrine and PPA by merchants who know that the products are being purchased for the purpose of making an illicit substance. The federal Comprehensive Methamphetamine Control Act of 1996 does not place a quantity limit on retail sales of pseudoephedrine or PPA, but it does require manufacturers, wholesalers and retailers of these chemicals to report suspicious transactions involving these products, most typically, significantly large purchases or repeated purchases within a short time of products containing ephedrine, pseudoephedrine and PPA.

This proposed legislation is intended to insulate innocent or unsuspecting sellers from the criminal sanctions by requiring either actual criminal intent or a "reasonably should know" standard. However, it also recognizes that manufacturers, distributors and retailers cannot turn a "blind eye" to purchases or theft of their products or profit from such sales if they reasonably should know the intended use of the drug is the production of methamphetamine.

Similar language was enacted in Iowa in 1996.

For more information about this NDMA model legislation, contact Kevin Kraushaar or Steve Mister at NDMA, (202) 429-9260.

Representative Tom Brice
ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205
Fairbanks, AK 99701
907-456-7423 / Fax: 451-9293

While in Juneau
State Capitol
Juneau, AK 99801-1182
907-465-3466

JAN 22 1999

Memorandum

To: Representative Pete Kott, Chairman Judiciary Committee

From: Representative Tom Brice *TB*

Date: January 22, 1999

RE: HB 3: Drugs: possession of precursor chemicals

I respectfully request that this bill be scheduled for a hearing in your committee. Please find attached a sponsor statement, section analysis and a pertinent newspaper clipping.



Representative Tom Brice

ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205
Fairbanks, AK 99701
907-456-7423 Fax: 451-9201
While in Juneau
State Capitol
Juneau, AK 99801-1132
907-465-3466

REPRESENTATIVE TOM BRICE SPONSOR STATEMENT FOR HB 3

Currently, state statutes prohibit law enforcement from arresting people making methamphetamines until they are actually producing a drug. The chemicals involved are dangerous, as is the production process. HB 3 will criminalize the possession of certain chemicals used in manufacturing methamphetamines, giving law enforcement the ability to be proactive when fighting metamphetamine production in Alaska. This legislation also requires stores to notify authorities when a customer purchases large quantities of the chemicals that are used to make methamphetamines.

Given the volatility of the production process, passage of this bill will also protect the lives and property in the neighborhoods where a drug lab may go into operation. The sponsor was asked to create this legislation by employees in the Department of Public Safety who were unable to make an arrest until a methamphetamines lab started cooking a drug.



Representative Tom Brice
ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205
Fairbanks, AK 99701
907-456-7423 Fax: 451-9293
While in Juneau
State Capitol
Juneau, AK 99801-1122
907-465-3466

To: Representative Pete Kott, Chairman House Judiciary Committee
From: Representative Tom Brice *TB*
Date: January 22, 1999
Re: Section Analysis, HB 3 Possession of precursor chemicals

Section 1

Amends AS 11.71 by creating new crimes that make it illegal to possess a listed chemical with the intent to manufacture a controlled substance. The offense will either be a class A or a class B felony depending upon what chemical is used.

Section 2

Amends as 11.71.95 to provide that unless a penalty is provided in AS 11.71, substances that are exempt from penalty under federal law are exempt from penalty under state law.

Section 3

Identifies what are listed chemicals for purposes of section one of the bill.

Section 4

Provides definitions for AS 11.71

Section 5

Requires that persons who distribute listed chemicals identified in section three to identify whom they distribute the chemical to and to report the distribution of the Commissioner of Public Safety. The Commissioner of Public Safety shall identify by regulation the amounts and quantities of the chemicals that the requirements of the section will apply to. Violation of this section is a class C felony.



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Meth lab suspect released

Loophole in law halts charges

By JOLIE LEWIS
Staff Writer

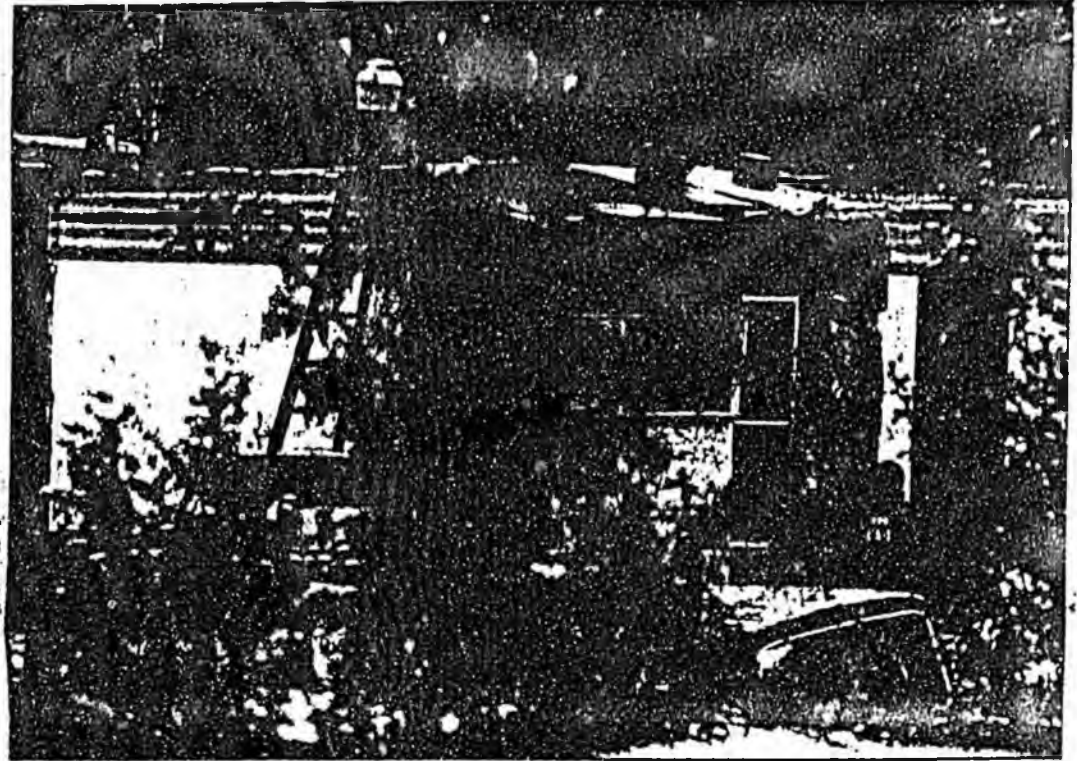
Highly explosive materials stored near exposed live wires; hazardous chemicals left uncapped in a trailer where two people lived. Authorities characterized the methamphetamine lab as extremely dangerous. To their disappointment, the 42-year-old Oklahoma transplant and the lab's alleged drug cook is now back on the streets three months after his arrest.

Oklahoma failed to produce a governor's warrant for Raymond C. Anderson's extradition before a 90-day window expired Sept. 21, and Alaska never filed drug charges.

Methamphetamine labs—described as extremely dangerous operations by Alaska State Troopers Statewide Drug Enforcement Unit investigators—are a new enough



RAYMOND ANDERSON



Sam Herald/News Miner

METH LAB—In this summer file photo, an investigator enters an Atco building suspected to be a methamphetamine lab Wednesday in a junk yard off the Old Richardson Highway south of North Pole.

criminal trend in Alaska that prosecutors are just now discovering, a possible loophole in state statute.

The chemical process Anderson allegedly used to cook the drug may not be illegal.

"Somewhere, the system has failed," said Jeff Deutch, the North Pole police officer who first sought a warrant for Anderson's arrest on a traffic charge. "Now it becomes a community problem again."

But Sgt. J.R. Roberts, chief of the local drug enforcement unit, said the setback should almost have been expected.

"It's something that's new to Alaska," Roberts said of meth labs. "It's new to the system. It's new to us. We're all novices when it comes to this."

North Pole police and drug investigators in mid-June converged on the junkyard Atco unit where Anderson apparently lived with his teen-age son. They had a warrant al-

leging Anderson had provided a false name during a traffic stop—his own license was suspended—and had fled from justice in Oklahoma.

Authorities didn't find Anderson that day, but they did discover hazardous chemicals and drug-manufacturing apparatus in a "poor man's" set-up that spooked even experienced methamphetamine lab investigators. There were no drugs, however.

Anderson was arrested a week later in a Fairbanks apartment on the warrant.

Oklahoma authorities said they would extradite. Though Anderson was wanted in two counties in southeastern Oklahoma, prosecutors from one took charge of extradition.

In this case, it was Bryan County, where Anderson was wanted for failing to show up in court in January on charges of possessing methamphetamine and marijuana after a felony conviction. Further drugs

charges are pending in other cases, said assistant district attorney Greg Jenkins.

In neighboring Choctaw County, Anderson missed court dates in cases alleging he delivered drugs and conspired to manufacture them. Assistant District Attorney Marie Blakely said Anderson has a "whole slew" of prior drugs convictions.

Oklahoma bondsman Wayne Holder, an agent for a company that posted more than \$30,000 of bonds on Anderson's behalf in Choctaw County, searched for Anderson for approximately six months. He tracked Anderson to Fairbanks and provided information to local investigators.

"It was just a long, hard deal," said Holder, who ultimately salvaged the company's bond. "We did our job. We got him incarcerated up there. ... As bondsmen, we're exonerated."

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METH: Suspected methamphetamine cook released; loophole found in law

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To extradite, the Bryan County district attorney needed to submit a warrant request to the Oklahoma governor, who in turn would sign it and send it to Alaska Gov. Tony Knowles for approval. Local authorities could then send Anderson back to Oklahoma.

They had 90 days. Bryan County officials, however, didn't begin the process until early September, more than 70 days after Anderson's arrest in Fairbanks.

Beverly Jackson, an extradition secretary in Bryan County, said she waited because Anderson at first said he would return willingly and because she thought Alaska would file felony drugs charges.

The documents were still in the governor's office in Oklahoma when time ran out Sept. 21. Blakely said it was "absolutely" disappointing Anderson slipped through their fingers.

Anderson walked out of jail in Fairbanks on Sept. 22.

Meanwhile, the district attorney's office in Fairbanks had reached a plea agreement with Anderson. He pleaded no contest to driving with a suspended license; the state dismissed the false report charge. That case was resolved Sept. 16.

Despite provisions in Alaska statutes that say manufacturing methamphetamine constitutes third-degree drugs misconduct, a felony, charges were never filed.

"We don't have a statute which makes it illegal to possess precursor drugs," said District Attorney Harry Davis, adding that the state may yet consider pinning other charges on Anderson.

State law says it is illegal to manufacture "any amount" of a controlled substance—suggesting that some amount of finished product must be recovered for the charge to apply, Davis said. It's also a felony to be in possession of certain illegal substances with the intent of using them to make drugs—but many precursors and chemicals used to make methamphetamine apparently are not defined as illegal.

Yet some of those same chemicals are so toxic or volatile that investigators say methamphetamine cooks may be putting an entire neighborhood at risk.

State Rep. Tom Brice, D-Fairbanks, wants to make Alaska's methamphetamine law more clear by defining other precursors as illegal substances. He said he was approached by investigators this summer and plans to introduce legislation next session if re-elected.

"If (investigators) see the boxes of all the precursors going into a house, it will allow them to crack that house before it goes into production," Brice said. "There's nothing else you can do with all that stuff except blow up the block."

Brice's legislation also would require stores to notify authorities when someone buys extremely large quantities of legal, over-the-counter drugs that can be used to make methamphetamine.

Phil Moberly, chief of the Statewide Narcotics Unit based at the district attorney's office in Anchorage, said his team is researching interpretations of stat-

utes applying to methamphetamine labs. He didn't want to comment definitively until after attending a "clandestine lab" class in Anchorage this week.

"Prosecution of (labs) is an evolving thing up here. We don't have a lot of experience with it," Moberly said. "I think we're going to see more."

Moberly has been involved with three methamphetamine lab cases in Anchorage; two of which were prosecuted federally. In the third case, a defunct lab was found in someone's house; the defendant was charged with possession of methamphetamine and maintaining a dwelling con-

taining drug-producing apparatus.

In Fairbanks, two methamphetamine labs have been raided. Crist A. Bigler, the alleged cook at a lab found four days before authorities discovered one in Anderson's trailer, has been charged in federal court.

Assistant U.S. Attorney Stephen Cooper declined to comment Thursday on the possibility of prosecuting the Anderson case, but Roberts said it isn't likely.

Anderson's public defender speculated something must have gone awry in the investigation. If it were simply a loophole in state law, Jim Cannon said federal prosecutors would have just picked up the case.

"The feds have been bleeding chemical under (illegal)," Cannon said. "I guess they found you couldn't use the evidence. Oklahoma never came up with the warrant, and the guy sat in jail for 90 days."

Roberts countered that investigators had done every-thing by the book—and if they had, attorneys would have told about it.

He pledged Saturday to sloughing out meth labs.

"Regardless of what the negotiations are, it's not going to stop our efforts to investigate and bring them down," he said. "It's still illegal."