

HB

149

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: March 14, 2005

FURTHER REFERRALS:

Date of Committee Action: April 7, 2005

The FINANCE Committee considered:

HB 149

HOUSE BILL NO. 149

SALE OF METHAMPHETAMINE AND PRECURSORS

"An Act relating to further regulation of the sale, possession, and delivery of certain chemicals and precursors used in the manufacture of methamphetamine."

Recommends it be replaced with HCS or CS for HB 149 (FIN)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 HSS
 LEG
 LAW
 LWF
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DCED				✓

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
AK Court	1			✓
Law	2			✓
DOA	3		✓	
DOC	4		✓	

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<i>Mind C/Land</i>	Hawken	✓			
<i>Grant Cook</i>	CRON	✓			
<i>[Signature]</i>	HOLM	✓			
<i>[Signature]</i>	STORZ	✓			
<i>[Signature]</i>	Kelly	✓			
<i>[Signature]</i>	Weyhacker	x			
<i>[Signature]</i>	FESTER	x			
<i>[Signature]</i>	MOSES	x			
Chair: <i>L. Meyer</i>	Meyer	x			
Chair: <i>[Signature]</i>	Chenault	x			

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB 149(JUD)
() Publish Date: _____

Revision Date/Time (Note if correction):
Title Sale of Methamphetamine and Precursors
Sponsor Ramras, Wilson, Lyr.n
Requester House Judiciary

Dept. Affected: Commerce
RDU Occupational Licensing (117)
Component Occupational Licensing
Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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						
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CHANGE IN REVENUES (1156)	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

CSHB 149(JUD) establishes requirements for the manufacture, wholesaler, and distributor of certain chemicals relating to methamphetamine; and to keep complete records of all transactions involving those products and to make those records available for inspection by law enforcement officers. New funding is not required to implement the provisions of this bill.

Prepared by: Jennifer Struckler, Administrative Manager Phone (907) 465-2144
Division: Occupational Licensing Date/Time 3/15/05 5:03 PM
Approved by: Edgar Blatchford, Commissioner Date 3/15/2005
Agency: Commerce, Community, and Economic Development

Amendment 3

with drawn

Croft

Conceptual Amendment to CSHB 149 24-LS0596/U

In Section 11, following subsection (e), insert language to the following effect:

If a law enforcement agency voluntarily designates itself as a central repository for the information collected in (a) or (b) in this section, with the intention of disseminating the information to other law enforcement agencies, each wholesaler, manufacturer, and distributor shall regularly report that information to the law enforcement agency.

adopted

24-LS0596\N.1
Luckhaupt
4/7/05

AMENDMENT

J
R

Hawker

OFFERED IN THE HOUSE

TO: CSHB 149(FIN)

- 1 Page 9, lines 20 - 22:
- 2 Delete all material.
- 3 Insert "have access to the log. The log and the information entered into the log is
- 4 confidential. The retailer may not allow access to the log or release information contained
- 5 within the log except to the Department of Public Safety or other law enforcement officers."

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 6, 2005

SUBJECT: Records kept by retailers - CSHB 149(FIN) (24-LS0596\N)

TO: Representative Kevin Meyer
Attn: Suzanne Cunningham

FROM: Gerald P. Luekhaupt
Legislative Counsel 

Enclosed is the CS(JUD) you requested. I have one comment about Amendment 1.¹ The bill requires retailers to maintain a cold medicine and iodine log. The amendment makes this log confidential and specifies that it is not a public record under the state public records statutes.²

1. I question the application of the public records statutes to these logs.³ The logs will be kept by private businesses, not public agencies. The public records statutes only apply to public records⁴ maintained or received by public agencies.⁵ Just because the state

¹ Amendment 1 added new language to proposed AS 17.30.090(b).

² AS 40.25.100 - AS 40.25.220.

³ Retailers are required to maintain the logs under proposed AS 17.30.090(b).

⁴ "Public records" are defined in AS 40.25.220(3) as:

books, papers, files, accounts, writings, including drafts and memorializations of conversations, and other items, regardless of format or physical characteristics, that are developed or received by a public agency, or by a private contractor for a public agency, and that are preserved for their informational value or as evidence of the organization or operation of the public agency; "public records" does not include proprietary software programs;

⁵ "Public agencies" are defined in AS 40.25.220(2) as:

a political subdivision, department, institution, board, commission, division, authority, public corporation, council, committee, or other

Representative Kevin Meyer

April 6, 2005

Page 2

requires private enterprise to maintain a particular record or retain certain information does not make that information or record a public record. I do not see how the public records statutes apply to records or information maintained by private businesses. Indeed, pharmacists are already required to keep similar logs for codeine cough syrup (available without a prescription) and for various poisons (available without a prescription) and the state does not exempt those logs from the public records statutes. Law enforcement officers are allowed access to these logs, and the information compiled from them has never to the extent of my research been considered a public record.

Law enforcement officers will have access to the logs required by this bill and I presume will harvest or cull information from the logs for further investigation. I guess some would argue that this harvested or culled information might be a public record. I do not see why the information harvested or culled from the logs by law enforcement officers would not be subject to the exemptions provided by AS 40.25.120(a)(3) or (6).

Maybe the concern is not really whether these logs are public records, but a concern that the retailers might disclose the information contained in these logs to others. If this is the concern then the bill should **require the retailers to maintain the confidentiality** of the log from disclosure to anyone other than law enforcement officers. For example, pharmacists are required to maintain the confidentiality of patient records that are maintained by the pharmacist.⁶ If a pharmacist sells the cold medicines or iodine regulated by this bill they will be required to keep the information maintained in the logs confidential under this statute. Non-pharmacists will also be able to sell these products but are not regulated⁷ by AS 08.80.315, thus, the need for a provision to require the retailers to keep this information confidential.

2. The CS(FIN) also requires wholesalers, manufacturers, and distributors of certain cold medicines and iodine to maintain certain records regarding transactions and to make those records available to law enforcement officers.⁷ If we are concerned that the information harvested or culled (and discussed infra in 1) is a public record, then it would seem that this information should similarly be exempted.

3. The CS(FIN) allows municipalities to require wholesalers, manufacturers, and distributors of the cold medicines and iodine to compile the information related to their transactions in the municipality and to transmit that information to the municipality police department at intervals set by the municipality.⁸ This information is different from that discussed infra in 1 and 2 and appears to me to be subject to the public records

instrumentality of the state or a municipality; 'public agency' includes the University of Alaska and the Alaska Railroad Corporation;

⁶ See AS 08.80.315.

⁷ See proposed AS 17.30.090(a).

⁸ See proposed AS 17.030.090(c).

Representative Kevin Meyer

April 6, 2005

Page 3

statutes are the records will no longer be merely compiled by a private entity so a public agency may look at them, but the records will be compiled and transmitted in whole to the public agency. Instead of law enforcement merely having access to records compiled by a private business and culling information necessary for law enforcement purposes from those records, the municipal police department, a public agency, will be the recipient of complete records that, it may be argued, are public records. I am not convinced that the complete records will be subject to the law enforcement exception to the public records statutes.

GPL:jad

05-197.jad

Enclosure

Adopted

AMENDMENT |

TO: CSHB 149 (FIN)

Page 9, lines 19 and 20:

After "dispensed." Delete all material and insert the following:

"Upon request, the Department of Public Safety and other law enforcement officers shall have access to the log. The log may be used for law enforcement purposes, but is otherwise confidential and not subject to public disclosure under AS 40.25.100 – 40.25.220."

HOUSE COMMITTEE REPC T

(11)

Date Referred to Committee: March 14, 2005

FURTHER REFERRALS:

Date of Committee Action: 4/5/05

The FINANCE Committee considered:

HB 149

HOUSE BILL NO. 149

SALE OF METHAMPHETAMINE AND PRECURSORS

"An Act relating to further regulation of the sale, possession, and delivery of certain chemicals and precursors used in the manufacture of methamphetamine."

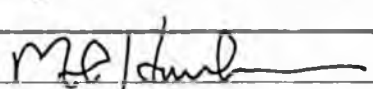
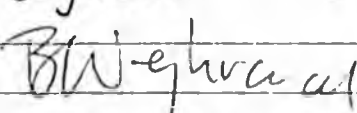


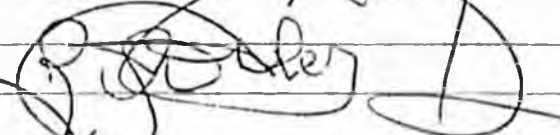
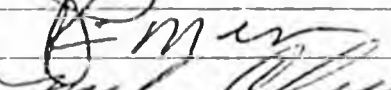

Recommends it be replaced with HCS or CS for HB 149 (FIN)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 HSS
 LEG
 LAW
 LWF
 MVA
 DNR
 DPS
 REV
 DOT
 CA

<u>NEW</u> FISCAL NOTES				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DCED				✓

<u>PREVIOUS</u> FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
AK Court	#1			✓
LAW	#2			✓
DOA	#3		✓	
DOC	#4		✓	

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Hawken	✓			
	Weyhrae	x			
	STOLTE	✓			
	Kelly	✓			
	FESTER	x			
Chair: 	Meyer	✓			
Chair: 	Obermuller	✓			

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number. _____
Bill Version: CSHB 149(JUD)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
Title Sale of Methamphetamine RDU Occupational Licensing (117)
and Precursors Component Occupational Licensing
Sponsor Ramras, Wilson, Lynn
Requester House Judiciary Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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						
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CHANGE IN REVENUES (1156)	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSHB 149(JUD) establishes requirements for the manufacture, wholesaler, and distributor of certain chemicals relating to methamphetamine; and to keep complete records of all transactions involving those products and to make those records available for inspection by law enforcement officers. New funding is not required to implement the provisions of this bill.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
Division: Occupational Licensing Date/Time: 3/15/05 5:03 PM
Approved by: Edgar Blatchford, Commissioner Date: 3/15/2005
Agency: Commerce, Community, and Economic Development

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 149(JUD)
(H) Publish Date: 3/14/05

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Sale of Methamphetamine BRU Alaska Court System
Component Trial Courts
Sponsor Representative Ramras
Requester _____ Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
The court system does not anticipate any fiscal impact from the passage of HB 149.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750
Division Alaska Court System Date/Time 3/3/05 2:23 PM
Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 3/3/2005
Agency Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 149(JUD)
(H) Publish Date: 3/14/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title: "An Act relating to further regulation of the sale, possession, and delivery of certain chemicals...." RDU: CRIMINAL
Sponsor: Representative Ramras Component: Criminal Justice Litigation
Requester: House Judiciary Component No: _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
This bill amends AS 11.71.020(a) by including the manufacture, delivery, or possession of methamphetamine or certain chemicals that make up methamphetamine as a misconduct involving a controlled substance in the second degree. The bill further defines the possession of six or more grams of certain chemicals used in the manufacture of methamphetamine as evidence that the person intended to use the listed chemical to manufacture or assist in the manufacture of methamphetamine. The bill excludes licensed wholesale and retail distributors of drugs; a manufacturer of chemicals or drug products; licensed pharmacists; and licensed health care providers.

Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone: 465-3673
Division: Administrative Services Division Date/Time: 3/6/05 12:32 PM
Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General Date: 3/6/005
Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSHB 149(JUD)
(H) Publish Date: 3/14/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title: An Act relating to controlled substances... RDU: Legal and Advocacy Services
Sponsor: Reps. Raniras, Wilson, Lynn... Component: Public Defender Agency
Requester: House Judiciary Component No.: 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	*	*	*	*	*	*
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2005) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
This bill amends the crime of misconduct involving a controlled substance in the second degree, a Class A felony, to include possessing or delivering an immediate precursor of methamphetamine or providing a listed chemical, including pseudoephedrine in certain amounts, to another person for the purpose of manufacturing methamphetamine. It also makes it a crime to possess, purchase or deliver restricted amounts of pseudoephedrine, iodine, or crystal iodine. The Agency's operations will be fiscally impacted should this bill be enacted. The Agency has seen a recent increase in appointments concerning methamphetamine cases. In addition, making it a new offense, and a felony in some instances to possess, purchase or deliver restricted amounts of products containing pseudoephedrine, iodine, or crystal iodine will increase the caseload of the Agency, but the extent of the impact is not possible to predict with any accuracy, therefore an indeterminate fiscal note is submitted.

Prepared by: Linda K. Wilson, Deputy Director Phone: 907)334-4416
Division: Public Defender Agency Date/Time: 3/8/05 12:07 PM
Approved by: Michael Tibbles, Deputy Commissioner Date: 3/8/2005
Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: CSHB 149(JUD)
(H) Publish Date: 3/14/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
Title "An act relating to... sale, possession, and RDU Institutional Facilities
delivery of certain chemicals ...in the manufacture of meth Component Institution Director's Office
Sponsor Representatives Ramras, Wilson, Lynn
Requester Judiciary, Finance Component No. 524

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	*	*	*	*	*	*
1003 GF Match	*	*	*	*	*	*
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts	*	*	*	*	*	*
1037 GF/Mental Health	*	*	*	*	*	*
Other (Specify Type—Do not abbreviate)	*	*	*	*	*	*
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	*	*	*	*	*	*
Part-time	*	*	*	*	*	*
Temporary	*	*	*	*	*	*

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 11.71.020(a) by including the manufacture, delivery, or possession of methamphetamine or certain chemicals that make up methamphetamine as a misconduct involving a controlled substance in the second degree. The bill defines the possession of six or more grams of certain chemicals used in the manufacture as evidence that the person intended to use the listed chemical to manufacture or assist in the manufacture of methamphetamine. The bill excludes licensed wholesale and retail distributors of drugs; a manufacturer of chemicals or drug products; licensed pharmacists; and licensed health care providers. The bill may increase the number of inmates in custody and may increase sentences for offenders convicted of unlawful activity covered by this legislation, but due to a lack of data and an inability to predict the number of potential prosecutions, the fiscal impact to the Department of Corrections is indeterminate.

Prepared by: Sharleen Griffin, Acting Director
Division: Administrative Services
Approved by: Portia C.K. Parker, Deputy Commissioner
Agency: Department of Corrections

Phone: 465-4641
Date/Time: 3/7/05 4:35 PM
Date: 3/7/2005

R10 4/5/05

24-LS0596\U
Luckhaupt
3/31/05

Amended

CS FOR HOUSE BILL NO. 149()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES RAMRAS, Wilson, Lynn, McGuire, Gatto

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. AS 11.41.120(a) is amended to read:

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

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

12 [OR]

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

1 (3) knowingly manufactures or delivers a controlled substance in
 2 violation of AS 11.71, and a person dies as a direct result of ingestion of the
 3 controlled substance; the death is a result that does not require a culpable mental
 4 state.

5 * Sec. 2. AS 11.51.100(c) is amended to read:

6 (c) In this section,

7 (1) "building," in addition to its usual meaning, includes any
 8 propelled vehicle or structure adapted for overnight accommodation of persons
 9 or for carrying on business; when a building consists of separate units, including
 10 apartment units, offices, or rented rooms, each unit is considered a part of the
 11 same building;

12 (2) "physically mistreated" means

13 (A) [(1)] having committed an act punishable under
 14 AS 11.41.100 - 11.41.250; or

15 (B) [(2)] having applied force to a child that, under the
 16 circumstances in which it was applied, or considering the age or physical
 17 condition of the child, constitutes a gross deviation from the standard of
 18 conduct that a reasonable person would observe in the situation because of the
 19 substantial and unjustifiable risk of

20 (i) [(A)] death;

21 (ii) [(B)] serious or protracted disfigurement;

22 (iii) [(C)] protracted impairment of health;

23 (iv) [(D)] loss or impairment of the function of a body
 24 member or organ;

25 (v) [(E)] substantial skin bruising, burning, or other skin
 26 injury;

27 (vi) [(F)] internal bleeding or subdural hematoma;

28 (vii) [(G)] bone fracture; or

29 (viii) [(H)] prolonged or extreme pain, swelling, or
 30 injury to soft tissue.

31 * Sec. 3. AS 11.51.100 is amended by adding new subsections to read:

1 (g) Notwithstanding AS 11.51.130, a person commits the crime of
2 endangering the welfare of a child in the first degree if the person knowingly
3 manufactures or attempts to manufacture methamphetamine in violation of AS 11.71
4 in a building, with reckless disregard that the building is used as a permanent or
5 temporary home or place of lodging for one or more children under 18 years of age.

6 (h) Endangering the welfare of a child in the first degree under (g) of this
7 section is a class C felony.

8 * Sec. 4. AS 11.51.130(a) is amended to read:

9 (a) A person commits the crime of contributing to the delinquency of a minor
10 if, being 19 years of age or older or being under 19 years of age and having the
11 disabilities of minority removed for general purposes under AS 09.55.590, the person
12 aids, induces, causes, or encourages a child

13 (1) under 18 years of age to do any act prohibited by state law unless
14 the child's disabilities of minority have been removed for general purposes under
15 AS 09.55.590;

16 (2) under 18 years of age or allows a child under 18 years of age,
17 under circumstances not proscribed under AS 11.51.100(g) to enter or remain in
18 the immediate physical presence of the unlawful manufacture, use, display, or delivery
19 of a controlled substance knowing that the manufacture, use, display, or delivery is
20 occurring, unless the child's disabilities of minority have been removed for general
21 purposes under AS 09.55.590;

22 (3) under 16 years of age to be repeatedly absent from school, without
23 just cause; or

24 (4) under 18 years of age to be absent from the custody of a parent,
25 guardian, or custodian without the permission of the parent, guardian, or custodian or
26 without the knowledge of the parent, guardian, or custodian, unless the child's
27 disabilities of minority have been removed for general purposes under AS 09.55.590
28 or the person has immunity under AS 47.10.350 or 47.10.398(a); it is an affirmative
29 defense to a prosecution under this paragraph that, at the time of the alleged offense,
30 the defendant

31 (A) reasonably believed that the child was in danger of physical

1 injury or in need of temporary shelter; and

2 (B) within 12 hours after taking the actions comprising the
3 alleged offense, notified a peace officer, a law enforcement agency, or the
4 Department of Health and Social Services of the name of the child and the
5 child's location.

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

7 (a) Except as authorized in AS 17.30, a person commits the crime of
8 misconduct involving a contro'led substance in the second degree if the person

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

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

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

15 or

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

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

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

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

25 or

26 (B) an immediate precursor of methamphetamine, or its salts,
27 isomers, or salts of isomer;

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

30 (6) under circumstances not proscribed under AS 11.71.010(a)(2),
31 delivers

1 (A) an immediate precursor of methamphetamine, or the
2 salts, isomers, or salts of isomers of the immediate precursor of
3 methamphetamine, to another person with reckless disregard that the
4 precursor will be used to manufacture any material, compound, mixture,
5 or preparation that contains methamphetamine, or its salts, isomers, or
6 salts of isomers; or

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

10 (i) methamphetamine, or its salts, isomers, or salts of
11 isomers;

12 (ii) an immediate precursor of methamphetamine, or
13 its salts, isomers, or salts of isomers; or

14 (iii) methamphetamine or its salts, isomers, or salts
15 of isomers in an organic solution.

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

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

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

29 (2) in the ordinary course of a legitimate business, or an employee of a
30 legitimate business, as a

31 (A) retailer or as a wholesaler;

- 1 (B) wholesale drug distributor licensed by the Board of
2 Pharmacy;
3 (C) manufacturer of drug products licensed by the Board of
4 Pharmacy;
5 (D) pharmacist licensed by the Board of Pharmacy; or
6 (E) health care professional licensed by the state.

7 * Sec. 7. AS 11.71.030(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 third degree if the person

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

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

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

18 (A) with reckless disregard that the possession occurs

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

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

21 or

22 (B) on a school bus.

23 * Sec. 8. AS 11.71.180 is amended by adding a new subsection to read:

24 (f) Schedule VA includes, unless specifically excepted or unless listed in
25 another schedule, any material, compound, mixture, or preparation that contains any
26 quantity of the following substances, including their salts, esters, isomers, and salts of
27 esters and isomers if those salts, esters, or isomers promote muscle growth, whenever
28 the existence of these salts, esters, and isomers is possible within the specific chemical
29 designation: anabolic steroids. In this subsection, "anabolic steroids" means any drug
30 or hormonal substance that is chemically and pharmacologically related to testosterone
31 (other than estrogens, progestins, and corticosteroids) and that promotes muscle

1 growth; "anabolic steroids" does not include an anabolic steroid that is expressly
2 intended for administration through implants to cattle or other nonhuman species and
3 that has been approved by the United States Secretary of Health and Human Services
4 for that administration, unless a person prescribes, dispenses, or distributes that type of
5 anabolic steroid for human use; "anabolic steroids" includes the following:

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

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(27) trenbolone.

* Sec. 9. 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 nine 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 more than nine grams of a listed chemical identified in (a) of this section

- (1) that was dispensed to the person under a valid prescription; or
- (2) in the ordinary course of a legitimate business, or to an employee of a legitimate business, as a

- (A) retailer or as a wholesaler;
- (B) wholesale drug distributor licensed by the Board of Pharmacy;
- (C) manufacturer of drug products licensed by the Board of Pharmacy;
- (D) pharmacist licensed by the Board of Pharmacy; or
- (E) a health care professional licensed by the state.

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

* Sec. 10. AS 11.71.900(20) is amended to read:

(20) "recreation or youth center" means a building, structure, athletic playing field, or playground

(A) run or created by a municipality or the state to provide athletic, recreational, or leisure activities for minors; or

(B) operated by a public or private agency to provide shelter, training, or guidance for minors.

1 * Sec. 11. AS 17.30 is amended by adding a new section to article 1 to read:

2 **Sec. 17.30.090. Dispensation of and registration and record requirements**
3 **for certain listed chemicals.** (a) A wholesaler, manufacturer, or distributor of
4 products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their
5 salts, isomers, or salts of isomers, or iodine or crystal iodine, shall keep complete
6 records of all transactions involving those products, including the names of all parties
7 involved in the transaction, the date of the transaction, and the amount of the drug
8 products involved. The records shall be kept readily retrievable and separate from all
9 other invoices or records of transactions not involving those products and shall be
10 maintained for not less than three years and must allow for in-person inspection of the
11 records by law enforcement officers.

12 (b) A retailer of a product or substance that contains (1) as the sole active
13 ingredient ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers,
14 or salts of isomers, or (2) iodine, or crystal iodine may not sell or dispense the product
15 or substance unless the retailer confirms the identity of the purchaser by valid
16 government-issued photo identification and the retailer requires the purchaser to sign a
17 written log completed by the retailer showing the date of the transaction, name of the
18 purchaser, type of identification and the identification number, and the amount
19 dispensed. The Department of Public Safety and other law enforcement officers shall
20 be allowed access to this log upon request.

21 (c) A person may not offer to sell a product or substance that contains (1) as
22 the sole active ingredient ephedrine, pseudoephedrine, or phenylpropanolamine, or
23 their salts, isomers, or salts of isomers, or (2) iodine, or crystal iodine unless that
24 product or substance is displayed behind a service counter and not accessible to the
25 public or is kept in a secured cabinet or storage area that may only be accessed by the
26 seller.

27 (d) Nothing in this section limits the authority of a person regulated by this
28 section to report to a law enforcement agency or officer suspicious purchases of a
29 chemical, product, or substance.

30 (e) Notwithstanding (a) of this section, if a municipality enacts an ordinance
31 requiring wholesalers, manufacturers, and distributors to report the information

1 maintained under (a) of this section, each wholesaler, manufacturer, and distributor
2 shall regularly report that information to the municipal police department at intervals
3 required in the ordinance.

4 (f) In this section,

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

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

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

17 (4) "wholesaler" means a person in the state or another state, other than
18 a manufacturer, who sells, transfers, or in any manner furnishes a drug product
19 described in (a) of this section to another person in the state for the purpose of the drug
20 product's being resold.

21 (f) A violation of (a), (b), or (c) of this section is a class A misdemeanor,
22 punishable upon conviction only by a fine in an amount not to exceed \$10,000. A
23 wholesaler, manufacturer, or distributor that knowingly fails to report as required by
24 (d) of this section is guilty of a violation. In this subsection, "knowingly" has the
25 meaning given in AS 11.81.900(a).

26 * Sec. 12. The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 APPLICABILITY. This Act applies to offenses committed on or after the effective
29 date of this Act.

30 * Sec. 13. This Act takes effect July 1, 2005.

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House District 10

House of Representatives

Sectional Summary Blank Sponsor Substitute for HB 149(), Methamphetamine/Pseudoephedrine/Anabolic Steroids Work Order 24-LS0596\U

Section 1. Will make it a crime of manslaughter if a person knowingly manufactures or delivers a controlled substance in violation of Alaska's drug laws to a person who dies from ingestion of the controlled substance.

Section 2. Expands on the definition of "building", in this section, to include any propelled vehicle or structure adapted to overnight accommodation of persons or for carrying on business, and to include each unit in a multi-unit building to be part of the same building.

Section 3. Makes the manufacture of methamphetamine in a building where one or more minor children, under the age of 18, is residing or staying a class C felony.

Section 4. States that crimes committed under AS 11.51.100(g) are a separate crime.

Section 5. Makes possessing methamphetamine in an organic solution, or delivery of a immediate precursor of methamphetamine, or a listed chemical to another person with the knowledge that that person intends to use the listed chemical or precursor to manufacture methamphetamine a class A felony, misconduct involving a controlled substance in the second degree.

Section 6. Makes possession of nine grams or more of ephedrine, pseudoephedrine, or phenylpropanolamine prima facie evidence that the person intended to use the listed chemical to manufacture methamphetamine or to assist another person with the manufacture of methamphetamine, except for a person who possesses a listed chemical in the ordinary course of a legitimate business.

Section 7. States that crimes committed under AS 11.71.020(a)(2)(5) are a separate crime.

Section 8. Makes certain anabolic steroids a schedule VA controlled substance.

Section 9. Limits the amount of ephedrine, pseudoephedrine, or phenylpropanolamine a person can purchase to nine grams within a 30-day period. Makes purchase or receipt of restricted amounts of certain listed chemicals a class C felony.

Section 10. Amends the definition of a "recreation or youth center, to include those operated by a public or private agency to provide shelter, training, or guidance for minors.

Section 11. Creates requirement for distribution, registration, and record requirements for wholesalers, manufactures, or distributors of certain listed chemicals and making violation of this section a class A misdemeanor, punishable upon conviction only by a fine in an amount not to exceed \$10,000.

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House District 10

House of Representatives

Sponsor Statement

HB 149

House Bill 149 is legislation addressing one of Alaska's fastest growing and most devastating crime problems. Never before has law enforcement been faced with such a dangerous synthetic narcotic. Methamphetamine is highly addictive, and can easily be manufactured in small clandestine laboratories using inexpensive, over the counter drugs and chemicals. These laboratories are detrimental to society, not only for the drugs they produce, but also due to fire hazard, and the toxic waste that they create.

The purpose of HB 149 is to address this highly addictive, central nervous system stimulant. HB 149 will make it a crime to possess or deliver substances in quantities that are used to manufacture methamphetamine. This bill will require a person acquiring drugs containing ephedrine, pseudoephedrine, or phenylpropanolamine, as well as those purchasing iodine or iodine crystals, to show a photo ID and sign a written log or receipt relating to the sale. Any business distributing these chemicals will have to keep these logs for three years and make them readily available to law enforcement. A business in violation of this law will be punishable upon conviction of a fine not to exceed \$10,000.

This bill would also restrict the amount of pseudoephedrine a person can acquire to nine grams within a 30-day period. Additionally, the bill will restrict the amount of pseudoephedrine a person can legitimately possess.

Additionally, this bill will make certain anabolic steroids a schedule VA controlled substance.

Furthermore, this bill will serve to protect Alaska's children by making it a class C felony to manufacture methamphetamine in a building where a minor is present.

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House District 10

House of Representatives

MEMO

To: Kevin Meyer, Co-Chairman House Finance Committee

Fm: Jane W. Pierson *JWP*

cc: Mike Chenault, Co-Chairman House Finance Committee

Date: April 4, 2005

Re: Blank Sponsor Substitute for House Bill 149/Work Order 24-LS0596U

Accompanying this memo is a Blank Sponsor Substitute and an amended Sectional Summary for House Bill 149. The differences between this blank CS and the House Judiciary CS for HB 149/24-LS0596U are as follows:

Criminal penalties for possession and purchase of iodine and crystal iodine have been removed. Upon further research, it became evident that the way the bill was drafted, too many law abiding Alaskans could be considered criminals. However, this CS of the bill will maintain the recording requirements for sales of iodine and crystal iodine.

The changes that were made by page and line concerning this issue are as follows:

p. 5, line 19	<i>remove</i> [or iodine or crystal iodine]
p. 6, lines 8-14	<i>remove</i>
p. 8, lines 19-22	<i>remove</i>
p. 9, lines 4-11	<i>remove</i>

Currently there are 18 single-entity products that this Sponsor Substitute would require to be kept behind a service counter. If this change were not made to the House Judiciary CS, retailers would be required to keep records on almost every cold or allergy medication, and would be required to keep almost 300 products behind a service counter. See, attachment A. Also, it should be noted that sole active ingredient products can be cooked down to 90% Pseudoephedrine (PSE), while combo-ingredient products can only be reduced to 5-7% PSE. See, attachment B.

Representative_Jay_Ramras@legis.state.ak.us

The changes that were made by page and line concerning this issue is as follows:

Sec. 11.

Page 10, line 1 A retailer of a product or substance that contains [a detectable quantity of] (1) as the sole active ingredient ephedrine, pseudoephedrine...

Page 10, line 10 A person may not offer to sell a product or substance that contains (1) as the sole active ingredient ephedrine, pseudoephedrine...

Finally, the last change relates to setting out in statute that a person regulated under Sec. 11 may contact a law enforcement agency or officer concerning the suspicious purchase of a chemical listed in this section.

The change that was made by page and line concerning this issue is as follows:

Page 10, line 15 – A new section (d) is added. Renumbering occurs accordingly.

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Thank you.

Tylenol MS St Sinus
Benadryl D Allergy Sinus FSTMLT
Tylenol Allergy Sinus
Contac Severe Max STR Cold & Flu
Contac Severe Cold Max Strength
Suphedrine MS Sin Caps
Pain Reliever Sinus Caps
Alka Seltzer Plus Cold & Cough
Tylenol Sinus ND MS
MS Flu Cold & Cough ND
Profen IB Cold Sinus CPLT
Motrin Cold & Sinus
Sudafed Sinus Nighttime Max STR
Aleve Sinus & Headache
Benadryl Cold Caplets
Pain Reliever Cold Severe Caps
Comtrex Non-Drowsy Cold & Cough
Benadryl D Allergy Sinus
Flu Cold & Cough Original
Benadryl Severe Allergy & Sinus
Headache
Pain Relief Sinus Allergy Caps
Tylenol Child Cold & Cough Chew
Suphedrine MS Cough & Cold
Tylenol Sinus
Triaminic Soft Chew Cold & Cough
Tylenol Max STR Sinus
Sudafed Sinus Nighttime
Tylenol Allergy Sinus
Sudafed Sinus & Cold Liquid Caps
Sudafed Sinus Tablets
Theraflu Severe Cold & Congestion NT
Theraflu Caplets
Child Aspirin FR Cold & Cough
Sudafed Severe Cold & Flu
Alka Seltzer Plus Cold
Contac Severe Cold & Flu Caplets
Tylenol M S Sinus
Advil Cold & Sinus
Sudafed Severe Cold & Flu
Tric Nite Time Max Strength

Tylenol Allergy Sinus DN MS
Sudafed Max Strength Sinus
Tylenol Allergy Sinus
Suphedrine Cold Allergy
Allerest Tablets Max Strength
Benadryl Allergy Sinus Headache
Suphedrine Severe Cold Caplets
Primatene
Tylenol Allergy Sinus
Suphedrine MS Sinus Tabs
Alka Seltzer Plus Nighttime
Triaminic Softchew Throat & Cough
Advil Allergy Sinus
Severe Cold and Flu Caplets
Comtrex Nighttime Cold & Cough
Sinutab Max Strength Non-Drowsy
Comtrex Deep Chest Cold
Advil Allergy Sinus
Comtrex Day & Nite Cold & Flu Therapy
Diph Headache Allergy Sinus CP
Profen IB Cold & Sinus CPLT
Tavist Allergy Sinus Headache
Suphedrine Severe Cold MS Capsules
Triacting MS Cough & Cold Cherry
Pain Reliever Cold COM MS Capsules
Tylenol Sinus Nite & Day Severe
Congestion
Sinus Caplets Non-Drowsy
Pain Relief ND Multi Caplets
Triacting MS Chest Congestion
Claritin D 24 Hour Allergy
Claritin D 12 Hour Allergy
NA Flu Day & Night Combo
NA Cold Day & Night Combo
Sinus Day & Night Caplet
Tylenol Cold Severe Congestion
Vicks Baby Rub
Advil Multi Symptom Cold
Advil Multi-Symptom Cold
Triacting MS Cold & Allergy

House Bill 272 impacts the following products by requiring that they be placed behind the pharmacy counter. Customers would be required to sign a log and show identification in order to purchase these products:

Single-entity PSE products

(Note: Some products are examples of store brand)

Suphedrine MX Strength	Suphedrine 12 Hour Caplets
Sudafed Tablets 30 MG	Sudafed 24 Hour
Suphedrine Decongenstant	Suphedrine 12 Hour Caplets
Sudafed 12 Hour	Contac 12 Hour Cold Caplets
Sudafed 12 Hour Caplets	Contac 12 Hour Caplets
Suphedrine	Cold Caps 12 Hour

Single-entity PSE products – Liquid and Gel Tabs

(Note: Some products are examples of store brand)

Pedia Care Infant Drops
Sudafed Children's Decongestant
Dimetapp 12 Hour Non-Drowsy
Childrens Suphedrine Grape
Sudafed Nasal Decongestant Childrens
Elixsure Children's Decongestant

Multiple/ Compound PSE Products

(NOTE: Products listed more than once indicate varying formulations; Some products are examples of store brands)

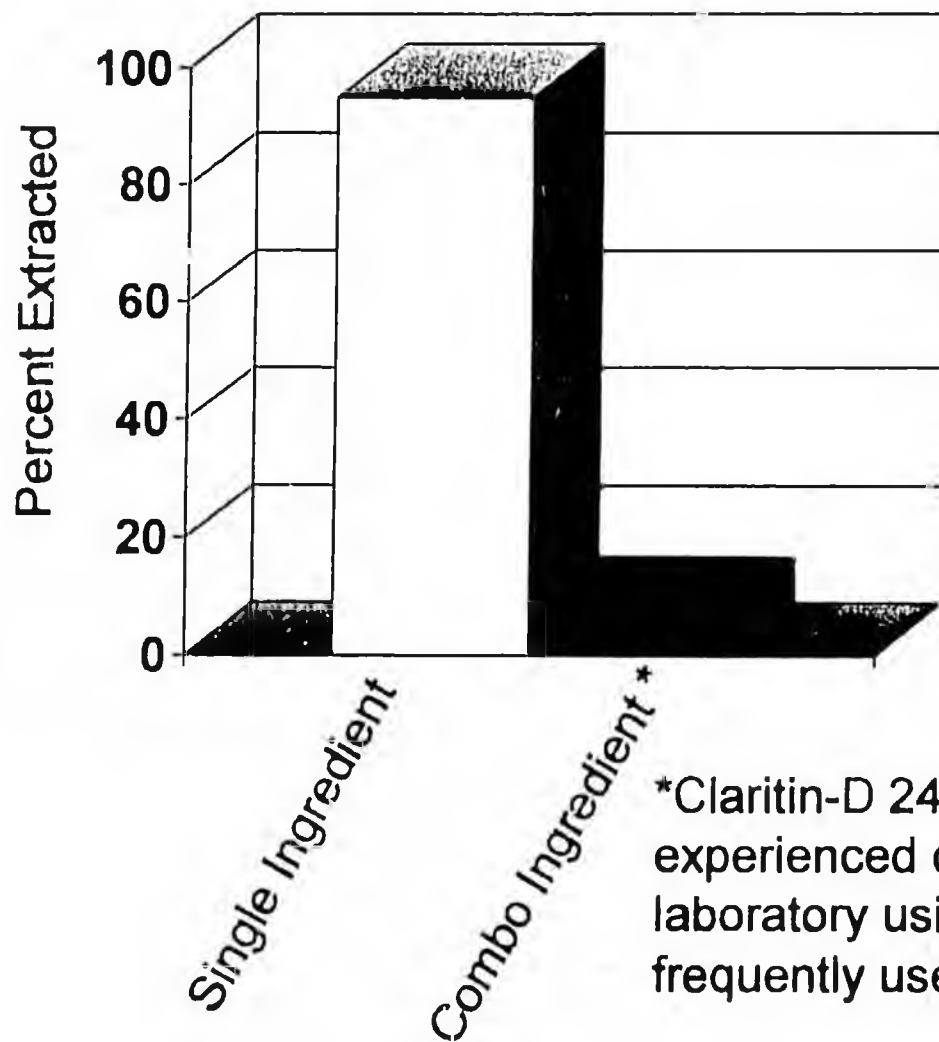
Alka Seltzer Plus Cold Tabs	Actifed Tablets
Claritin D Allergy Tabs (X 3 strengths)	Contac Day & Night Cold & Flu
Nyquil Cold Medicine (capsules, gelcaps, liquid)	Theraflu Flu Cold & Cough
ND Allergy Congestant	Flu Cold & Cough Nite Time
Advil Cold and Sinus	Tylenol Sinus ND Severe Congestion
Tylenol Cold Severe Congestion	Theraflu Non-Drowsy Flu & Congestion
Aphedrid Tabs	Sudafed Sinus
Theraflu Max Strength Nighttime	Theraflu
ND Allergy Congestion Tab 24 Hour	Tylenol Allergy Sinus
Tylenol Flu Gelcaps	Alavert Allergy Sinus
Aphedrid Cold & Allergy Tab	Coricidin D Tablet
Tylenol Cold ND MS	Tylenol Cold ND Caplet
Theraflu Max Strength Packets	Alavert Allergy
Theraflu Nighttime Flu	Tylenol Max STR Sinus
Drixoral Cold & Allergy	Suphedrine ND Liquid Sinus Caps
Advil Cold and Sinus	Theraflu Cold & Sore Throat
Tylenol Cold MS Caplet	Theraflu Nite Time Flu & Cough
Aleve Cold and Sinus	Primatene
Suphedrine MS Tablets	Advil Flu & Body Ache
Sudafed Non Drying Sinus	Sudafed Sever Cold & Flu
ND Allergy Congestion Tab 24 Hour	Benadryl Allergy Sinus Headache
	P RLVR Allergy Sinus Max

Multiple/ Compound PSE Products – Liquid and Gel Tabs

(NOTE: Products listed more than once indicate varying formulations; Some products are examples of store brands)

Robitussin Cough Syrup (X 4 strengths/ flavors)	Nyquil Original Twin Pack
Dayquil Liquicaps	Dimetapp Nighttime Flu
Tylenol Infant Cold Drops	Vicks Formula 44D
Children's Tylenol Cold Cough	Childrens Advil Cold
Vicks Dayquil	Children's Benadryl Allergy Cold
Pediacare Decongestant Plus Cough	Robitussin PM Cough and Cold
Dayquil Liquid	Robitussin Pediatric Night
Tylenol Flu MS Day/ Night	Children's Motrin Cold Dye Free
Children's Motrin Cold	Nyquil Twin Pack Cherry
Nighttime Liquid Cherry	Robitussin Syrup PE
Nighttime Liquid Original	Benadryl D Allergy Sinus Liquid
Dimetapp DM Elixir	Robitussin Maximum Strength
Dimetapp Decongestant Cough Infant Drops	Pediacare Nite Rest Nighttime Original
Tussin CF	Vicks Formula 44M
Tylenol Cold ND Geltabs	Tussin MS Cough & Cold EXL
Daytime Liquid Caps	Sinus Pain Relief Gelcaps
Robitussin Flu	Pediacare Cough Plus Cold
Nighttime Liquid Original	Tussin Pediatric
Robitussin Pedia Cough & Cold	Sudafed Children Cold & Cough
Tylenol Childrens Flu Formula	Infant Cold Drops Cherry
Nighttime Liquid Cherry	Dibromm Elixir Grape
Pedia Care Cough & Cold	Dibromm DM Elixir Grape
Robitussin Cough & Cold	Robitussin
Tylenol Flu Night Time	Dimetapp Pediatric
Tylenol Infant Cold Decongestant Drops	Vicks Pediatric Formula 44E
Advil Cold and Sinus	Dibromm Elixir Grape
Nighttime Liquid Caps	Triacting Sorethroat Grape
Vicks Dayquil/ Nyquil Liquicaps	Robitussin Cough & Cold
Sudafed Cold & Cough Liquid Caps	Childs Cold Liquid Grape
Dimetapp Elixir	Daytime Cold & Flu Softgels
Vicks Formula 44E	Sinus Max Strength Geltabs NA
Vicks Dayquil ND Cold Flu	Vicks Dayquil Twin
Robitussin PE	Night Time Cold & Flu Softgels
Vicks Formula 44M	Pediatric Relief Infant Drops
Vicks Children's Nyquil Cold & Cough	Childrens Pain Reliever Flu
Children's Tylenol Cold Nighttime	Suphedrine Cough & Cold Liquid Gel
Dimetapp Cough Plus Cold	Children's Tylenol Cold Ibuprofen Cold Suspension
Robitussin Cough, Cold & Flu	Dayquil Sinus Liquicaps
Robitussin Allergy & Cough	Dimetapp Cold & Fever
ND Day Time Liquid	Children's Advil Allergy Sinus
Robitussin Cold Severe Congestion	Tylenol Cold & Flu Daytime
Vicks Nyquil Cold & Flu	Dimetapp Elixir
Sudafed Cold & Cough Liquid Caps	

Extraction from Combination Tablets Yields Far Lower Levels of Pseudoephedrine than Single Ingredient Products



*Claritin-D 24 extracted by an experienced chemist in a pharmaceutical laboratory using the "UncleFester" method frequently used by meth cooks

Attachment B

House Bill 272 impacts the following products by requiring that they be placed behind the pharmacy counter. Customers would be required to sign a log and show identification in order to purchase these products:

Single-entity PSE products

(Note: Some products are examples of store brand)

Suphedrine MX Strength	Suphedrine 12 Hour Caplets
Sudafed Tablets 30 MG	Sudafed 24 Hour
Suphedrine Decongestant	Suphedrine 12 Hour Caplets
Sudafed 12 Hour	Contac 12 Hour Cold Caplets
Sudafed 12 Hour Caplets	Contac 12 Hour Caplets
Suphedrine	Cold Caps 12 Hour

Single-entity PSE products – Liquid and Gel Tabs

(Note: Some products are examples of store brand)

Pedia Care Infant Drops
Sudafed Children's Decongestant
Dimetapp 12 Hour Non-Drowsy
Childrens Suphedrine Grape
Sudafed Nasal Decongestant Childrens
Elixsure Children's Decongestant

Multiples Compound PSE Products

(NOTE: Products listed more than once indicate varying formulations; Some products are examples of store brands)

Alka Seltzer Plus Cold Tabs	Actifed Tablets
Claritin D Allergy Tabs (X 3 strengths)	Contac Day & Night Cold & Flu
Nyquil Cold Medicine (capsules, gelcaps, liquid)	Theraflu Flu Cold & Cough
ND Allergy Congestant	Flu Cold & Cough Nite Time
Advil Cold and Sinus	Tylenol Sinus ND Severe Congestion
Tylenol Cold Severe Congestion	Theraflu Non-Drowsy Flu & Congestion
Aphedrid Tabs	Sudafed Sinus
Theraflu Max Strength Nighttime	Theraflu
ND Allergy Congestion Tab 24 Hour	Tylenol Allergy Sinus
Tylenol Flu Gelcaps	Alavert Allergy Sinus
Aphedrid Cold & Allergy Tab	Coricidin D Tablet
Tylenol Cold ND MS	Tylenol Cold ND Caplet
Theraflu Max Strength Packets	Alavert Allergy
Theraflu Nighttime Flu	Tylenol Max STR Sinus
Drixoral Cold & Allergy	Suphedrine ND Liquid Sinus Caps
Advil Cold and Sinus	Theraflu Cold & Sore Throat
Tylenol Cold MS Caplet	Theraflu Nite Time Flu & Cough
Aleve Cold and Sinus	Primatene
Suphedrine MS Tablets	Advil Flu & Body Ache
Sudafed Non Drying Sinus	Sudafed Sever Cold & Flu
ND Allergy Congestion Tab 24 Hour	Benadryl Allergy Sinus Headache
	P RLVR Allergy Sinus Max

Tylenol MS St Sinus
Benadryl D Allergy Sinus FSTMLT
Tylenol Allergy Sinus
Contac Severe Max STR Cold & Flu
Contac Severe Cold Max Strength
Suphedrine MS Sin Caps
Pain Reliever Sinus Caps
Alka Seltzer Plus Cold & Cough
Tylenol Sinus ND MS
MS Flu Cold & Cough ND
Profen IB Cold Sinus CPLT
Motrin Cold & Sinus
Sudafed Sinus Nighttime Max STR
Aleve Sinus & Headache
Benadryl Cold Caplets
Pain Reliever Cold Severe Caps
Comtrex Non-Drowsy Cold & Cough
Benadryl D Allergy Sinus
Flu Cold & Cough Original
Benadryl Severe Allergy & Sinus
Headache
Pain Relief Sinus Allergy Caps
Tylenol Child Cold & Cough Chew
Suphedrine MS Cough & Cold
Tylenol Sinus
Triaminic Soft Chew Cold & Cough
Tylenol Max STR Sinus
Sudafed Sinus Nighttime
Tylenol Allergy Sinus
Sudafed Sinus & Cold Liquid Caps
Sudafed Sinus Tablets
Theraflu Severe Cold & Congestion NT
Theraflu Caplets
Child Aspirin FR Cold & Cough
Sudafed Severe Cold & Flu
Alka Seltzer Plus Cold
Contac Severe Cold & Flu Caplets
Tylenol M S Sinus
Advil Cold & Sinus
Sudafed Severe Cold & Flu
Tric Nite Time Max Strength

Tylenol Allergy Sinus DN MS
Sudafed Max Strength Sinus
Tylenol Allergy Sinus
Suphedrine Cold Allergy
Allerest Tablets Max Strength
Benadryl Allergy Sinus Headache
Suphedrine Severe Cold Caplets
Primatene
Tylenol Allergy Sinus
Suphedrine MS Sinus Tabs
Alka Seltzer Plus Nighttime
Triaminic Softchew Throat & Cough
Advil Allergy Sinus
Severe Cold and Flu Caplets
Comtrex Nighttime Cold & Cough
Sinutab Max Strength Non-Drowsy
Comtrex Deep Chest Cold
Advil Allergy Sinus
Comtrex Day & Nite Cold & Flu Therapy
Diph Headache Allergy Sinus CP
Profen IB Cold & Sinus CPLT
Tavist Allergy Sinus Headache
Suphedrine Severe Cold MS Capsules
Triacting MS Cough & Cold Cherry
Pain Reliever Cold COM MS Capsules
Tylenol Sinus Nite & Day Severe
Congestion
Sinus Caplets Non-Drowsy
Pain Relief ND Multi Caplets
Triacting MS Chest Congestion
Claritin D 24 Hour Allergy
Claritin D 12 Hour Allergy
NA Flu Day & Night Combo
NA Cold Day & Night Combo
Sinus Day & Night Caplet
Tylenol Cold Severe Congestion
Vicks Baby Rub
Advil Multi Symptom Cold
Advil Multi-Symptom Cold
Triacting MS Cold & Allergy

Multiple/ Compound PSE Products – Liquid and Gel Tabs

(NOTE: Products listed more than once indicate varying formulations; Some products are examples of store brands)

Robitussin Cough Syrup (X 4 strengths/
flavors)
Dayquil Liquicaps
Tylenol Infant Cold Drops
Children's Tylenol Cold Cough
Vicks Dayquil
Pediapcare Decongestant Plus Cough
Dayquil Liquid
Tylenol Flu MS Day/ Night
Children's Motrin Cold
 Nighttime Liquid Cherry
 Nighttime Liquid Original
Dimetapp DM Elixir
Dimetapp Decongestant Cough Infant
 Drops
Tussin CF
Tylenol Cold ND Geltabs
Daytime Liquid Caps
Robitussin Flu
Nighttime Liquid Original
Robitussin Pedia Cough & Cold
Tylenol Childrens Flu Formula
 Nighttime Liquid Cherry
Pedia Care Cough & Cold
Robitussin Cough & Cold
Tylenol Flu Night Time
Tylenol Infant Cold Decongestant Drops
Advil Cold and Sinus
Nighttime Liquid Caps
Vicks Dayquil/ Nyquil Liquicaps
Sudafed Cold & Cough Liquid Caps
Dimetapp Elixir
Vicks Formula 44E
Vicks Dayquil ND Cold Flu
Robitussin PE
Vicks Formula 44M
Vicks Children's Nyquil Cold & Cough
Children's Tylenol Cold Nighttime
Dimetapp Cough Plus Cold
Robitussin Cough, Cold & Flu
Robitussin Allergy & Cough
ND Day Time Liquid
Robitussin Cold Severe Congestion
Vicks Nyquil Cold & Flu
Sudafed Cold & Cough Liquid Caps
Nyquil Original Twin Pack
Dimetapp Nighttime Flu
Vicks Formula 44D
Childrens Advil Cold
Children's Benadryl Allergy Cold
Robitussin PM Cough and Cold
Robitussin Pediatric Night
Children's Motrin Cold Dye Free
Nyquil Twin Pack Cherry
Robitussin Syrup PE
Benadryl D Allergy Sinus Liquid
Robitussin Maximum Strength
Pediapcare Nite Rest
 Nighttime Original
Vicks Formula 44M
Tussin MS Cough & Cold EXL
Sinus Pain Relief Gelcaps
Pediapcare Cough Plus Cold
Tussin Pediatric
Sudafed Children Cold & Cough
Infant Cold Drops Cherry
Dibromm Elixir Grape
Dibromm DM Elixir Grape
Robitussin
Dimetapp Pediatric
Vicks Pediatric Formula 44E
Dibromm Elixir Grape
Triacting Sorethroat Grape
Robitussin Cough & Cold
Childs Cold Liquid Grape
Daytime Cold & Flu Softgels
Sinus Max Strength Geltabs NA
Vicks Dayquil Twin
Night Time Cold & Flu Softgels
Pediatric Relief Infant Drops
Childrens Pain Reliever Flu
Suphedrine Cough & Cold Liquid Gel
Children's Tylenol Cold
 Ibuprofen Cold Suspension
Dayquil Sinus Liquicaps
Dimetapp Cold & Fever
Children's Advil Allergy Sinus
Tylenol Cold & Flu Daytime
Dimetapp Elixir

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House District 10

House of Representatives

Sectional Summary

CSHB 149(JUD), Methamphetamine/Pseudoephedrine/Anabolic Steroids

Work Order 24-LS0596\X

Section 1. Will make it a crime of manslaughter if a person knowingly manufactures or delivers a controlled substance in violation of Alaska's drug laws to a person who dies from ingestion of the controlled substance.

Section 2. Expands on the definition of "building", in this section, to include any propelled vehicle or structure adapted to overnight accommodation of persons or for carrying on business, and to include each unit in a multi-unit building to be part of the same building.

Section 3. Makes the manufacture of methamphetamine in a building where one or more minor children, under the age of 18, is residing or staying a class C felony.

Section 4. States that crimes committed under AS 11.51.100(g) are a separate crime.

Section 5. Makes possessing methamphetamine in an organic solution, or delivery of a immediate precursor of methamphetamine, or a listed chemical to another person with the knowledge that that person intends to use the listed chemical or precursor to manufacture methamphetamine a class A felony, misconduct involving a controlled substance in the second degree.

Section 6. Makes possession of nine grams or more of pseudoephedrine or iodine or crystal iodine prima facie evidence that the person intended to use the listed chemical to manufacture methamphetamine or to assist another person with the manufacture of methamphetamine, except for a person who possesses the listed chemical in the ordinary course of a legitimate business.

Section 7. States that crimes committed under AS 11.71.020(a)(2)(5) are a separate crime.

Section 8. Makes certain anabolic steroids a schedule VA controlled substance.

Section 9. Limits the amount of pseudoephedrine a person can purchase to nine grams within a 30-day period. Limits the amount of iodine or iodine crystals a person can purchase to nine grams within a 30-day period. Makes possession or purchase of restricted amounts of certain listed chemicals with intent to manufacture or distribute for the purpose of the manufacture of methamphetamine a class C felony.

Section 10. Amends the definition of a "recreation or youth center, to include those operated by a public or private agency to provide shelter, training, or guidance for minors.

Section 11. Creates requirement for distribution, registration, and record requirements for wholesalers, manufactures, or distributors of certain listed chemicals and making violation of this section a class A misdemeanor, punishable upon conviction only by a fine in an amount not to exceed \$10,000.



Consumer Healthcare
Products Association

March 8, 2005

By Electronic Mail

The Honorable Lesli McGuire
Chair, House Judiciary Committee
State Capitol, Room 118
Juneau, Alaska 99801

Re: House Bill 149 – Proposed Amendments

Dear Representative McGuire,

Thank you for the opportunity to submit testimony and comments on House Bill 149 (“HB 149”) at yesterday’s hearing. The Consumer Healthcare Products Association (“CHPA”) supports the State’s efforts to address the growing methamphetamine abuse problem in Alaska. As discussed yesterday, however, CHPA has significant concerns about placing over-the-counter cough and cold products containing pseudoephedrine behind a counter and thereby limiting legitimate consumers’ access to these trusted, effective products. Other states have taken less restrictive measures and have still seen success in reducing the number of meth lab incidents in their states.

In response to the Committee’s invitation to submit additional comments or suggested amendments for consideration at Wednesday’s hearing, I am attaching our model legislation and the Washington State registration and reporting provisions referenced in my testimony.

With regards to our concerns about placing pseudoephedrine products behind a counter, we respectfully ask that the committee consider deleting the requirement in proposed Sec. 17.30.090(b) placing products behind the counter. Instead, we request consideration of the following language (also shown in our attached model legislation as Sec. 101 Restrictions on the Sale of Methamphetamine Precursors):

(a) No retail establishment or individual shall transfer, sell, deliver or provide more than 2 packages or 6 grams of pseudoephedrine base, ephedrine base or phenylpropanolamine base product in a single retail sales transaction to a consumer;

(1) This section does not apply to pediatric products primarily intended for administration, according to label instructions, to children under 12 years of age, either:

(i) In solid dosage form when individual dosage units do not exceed 15 milligrams of ephedrine, pseudoephedrine or phenylpropanolamine; or

(ii) In liquid form when recommended dosage units, according to label instructions, do not exceed 15 milligrams of ephedrine, pseudoephedrine or phenylpropanolamine per five milliliters of liquid product; or

(iii) In liquid form that are primarily intended for administration to children under two years of age for whom the recommended dosage does not exceed two milliliters and that have a total package content of not more than one fluid ounce.

(b) The retail sale of nonliquid pseudoephedrine, ephedrine or phenylpropanolamine product is limited to:

- (1) Sales in packages containing not more than a total of three grams of pseudoephedrine base, ephedrine base or phenylpropanolamine base;*
- (2) Sales in blister packs, each blister containing not more than two dosage units, or when the use of blister packs is technically infeasible, sales in unit dose packets or pouches.*

(c) Any retail establishment, not currently licensed/registered by the Board of Pharmacy, which sells pseudoephedrine, ephedrine or phenylpropanolamine product(s) shall submit a notice of intent to sell with the an appropriate state designated agency indicating the establishment's intent to sell pseudoephedrine, ephedrine or phenylpropanolamine product (s).

(d) A person is guilty of unlawful distribution of a methamphetamine precursor when he knowingly and unlawfully sells, transfers, distributes, or dispenses any product containing ephedrine, pseudoephedrine or phenylpropanolamine, if the person knows that the purchaser will use the product as a precursor to methamphetamine or another controlled illegal substance or if the person sells, transfers, distributes or dispenses the product with reckless disregard as to how the product will be used.

- (1) Unlawful distribution of a methamphetamine precursor is a class ## felony for the first offense and a class ## felony for the second or subsequent offense.*
- (2) A retailer who is the general owner or operator of an establishment that sells pseudoephedrine, ephedrine, or phenylpropanolamine product(s) shall not be penalized pursuant to this section if the retailer documents that an employee training program was conducted to train employees on compliance with this section.*

Additionally, given the committee's interest in learning more about the registration and reporting requirements in Washington, I have attached provisions requiring manufacturers and wholesalers to report certain transactions involving pseudoephedrine products.

Thanks again for the opportunity to participate in the Committee's consideration of HB 149. We look forward to working with you on this issue. Please do not hesitate to call me at (202) 429-9260 if I can provide any additional information.

Sincerely,

Libby Dannenberg
State Relations Counsel

Washington State Statutory Provisions on Manufacturer and Wholesaler Reporting

RCW 69.43.020

Receipt of substance from source outside state -- Report -- Penalty.

(1) Any manufacturer, wholesaler, retailer, or other person who receives from a source outside of this state any substance specified in RCW 69.43.010(1) shall submit a report of such transaction to the state board of pharmacy under rules adopted by the board.

(2) Any person specified in subsection (1) of this section who does not submit a report as required by subsection (1) of this section is guilty of a gross misdemeanor.

[2001 c 96 § 3; 1988 c 147 § 2.]

RCW 69.43.030

Exemptions.

RCW 69.43.010 and 69.43.020 do not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a practitioner, as defined in chapter 69.41 RCW;

(2) Any practitioner who administers or furnishes a substance to his or her patients;

(3) Any manufacturer or wholesaler licensed by the state board of pharmacy who sells, transfers, or otherwise furnishes a substance to a licensed pharmacy or practitioner;

(4) Any sale, transfer, furnishing, or receipt of any drug that contains ephedrine, phenylpropanolamine, or pseudoephedrine, or of any cosmetic that contains a substance specified in RCW 69.43.010(1), if such drug or cosmetic is lawfully sold, transferred, or furnished, over the counter without a prescription under chapter 69.04 or 69.41 RCW.

[1988 c 147 § 3.]

RCW 69.43.035

Suspicious transactions--Report--Penalty.

(1) Any manufacturer or wholesaler who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010(1) to any person in a suspicious transaction shall report the transaction in writing to the state board of pharmacy.

(2) Any person specified in subsection (1) of this section who does not submit a report as required by subsection (1) of this section is guilty of a gross misdemeanor.

(3) For the purposes of this section, "suspicious transaction" means a sale or transfer to which any of the following applies:

(a) The circumstances of the sale or transfer would lead a reasonable person to believe that the substance is likely to be used for the purpose of unlawfully manufacturing a controlled substance under chapter 69.50 RCW, based on such factors as the amount involved, the method of payment, the method of delivery, and any past dealings with any participant in the transaction. The state board of pharmacy shall adopt by rule criteria for determining whether a transaction is suspicious, taking into consideration the recommendations in appendix A of the report to the United States attorney general by the suspicious orders task force under the federal comprehensive methamphetamine control act of 1996.

(b) The transaction involves payment for any substance specified in RCW 69.43.010(1) in cash or money orders in a total amount of more than two hundred dollars.

(4) The board of pharmacy shall transmit to the department of revenue a copy of each report of a suspicious transaction that it receives under this section.

[2004 c 52 § 6; 2001 c 96 § 4.]

Methamphetamine Reduction Act

The Methamphetamine Reduction Act ("Act") provides a comprehensive solution to the methamphetamine problem. The Act provides for limits on the sale and possession of precursor products, a consistent state-wide law, a Meth Watch program to raise awareness and partner community, law enforcement and retail interests, environmental cleanup of clandestine labs, education, prevention, treatment and penalties for child endangerment.

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 abroad, drug dealers have also learned how to acquire otherwise legitimate chemicals and medications 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 and pseudoephedrine are safe and effective ingredients in these medications that are approved by the U.S. Food and 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.

This proposed legislation provides for the following:

- Makes it unlawful to purchase more than 2 packages of pseudoephedrine medication at one time. This allows consumers to purchase medicine they need to treat their congestion and colds while limiting the ability of criminals to purchase large quantities to use in the illegal manufacture of methamphetamine.
- Retailers must file a notice of intent to sell pseudoephedrine, provided that the retailer is not already registered with that state's Board of Pharmacy. This gives law enforcement another tool to identify which retailers are selling these products.
- Criminalizes possession of precursor products if a person intends to use them to manufacture methamphetamine and provides that a person in possession of a large quantity of a precursor is presumed to intend to violate the law.
- Authorizes and funds the Meth Watch program, which engages retailers, law enforcement, state and local agencies and the communities in the process of reducing the diversion of legitimate products for illicit manufacturing of methamphetamine.
- Instructs the proper state agency to develop a protocol for the clean-up of former clandestine methamphetamine labs and sets out guidelines for grants to local communities.
- Directs grants for education programs relating to prevention and treatment and provides funding for treatment programs for children and adults.
- Increases the penalties for those who manufacture methamphetamine in the presence of a child.
- Provides mechanism for denial of bail for meth lab operators.

This legislation will punish wrongdoers, give law enforcement additional tools to prevent methamphetamine production, provide much needed avenues for treatment and education and distinguishes between legitimate use of over-the-counter medicines and diversion activities. It attacks methamphetamine production without unduly burdening legitimate consumers.

METHAMPHETAMINE REDUCTION ACT

A Bill: To respond to the illegal production, distribution, and use of methamphetamine in _____state_____, and for other purposes.

TITLE I. PRECURSOR DIVERSION

Sec. 101 Restrictions on the Sale of Methamphetamine Precursors

Sec. 102 Possession of Methamphetamine Precursor

Sec. 103 Application to Political Subdivision of State

Sec. 104 Effective Date

SEC. 101 RESTRICTIONS ON THE SALE OF METHAMPHETAMINE PRECURSORS

(a) No retail establishment or individual shall transfer, sell, deliver or provide more than 2 packages or 6 grams of pseudoephedrine base, ephedrine base or phenylpropanolamine base product in a single retail sales transaction to a consumer;

(1) This section does not apply to pediatric products primarily intended for administration, according to label instructions, to children under 12 years of age, either:

- (i) In solid dosage form when individual dosage units do not exceed 15 milligrams of ephedrine, pseudoephedrine or phenylpropanolamine; or
- (ii) In liquid form when recommended dosage units, according to label instructions, do not exceed 15 milligrams of ephedrine, pseudoephedrine or phenylpropanolamine per five milliliters of liquid product; or
- (iii) In liquid form that are primarily intended for administration to children under two years of age for whom the recommended dosage does not exceed two milliliters and that have a total package content of not more than one fluid ounce.

(b) The retail sale of nonliquid pseudoephedrine, ephedrine or phenylpropanolamine product is limited to:

- (1) Sales in packages containing not more than a total of three grams of pseudoephedrine base, ephedrine base or phenylpropanolamine base;
- (2) Sales in blister packs, each blister containing not more than two dosage units, or when the use of blister packs is technically infeasible, sales in unit dose packets or pouches.

(c) Any retail establishment, not currently licensed/registered by the Board of Pharmacy, which sells pseudoephedrine, ephedrine or phenylpropanolamine product(s) shall submit a notice of intent to sell with the an appropriate state designated agency indicating the establishment's intent to sell pseudoephedrine, ephedrine or phenylpropanolamine product (s).

(d) A person is guilty of unlawful distribution of a methamphetamine precursor when he knowingly and unlawfully sells, transfers, distributes, or dispenses any product containing ephedrine, pseudoephedrine or phenylpropanolamine, if the person knows that the purchaser will use the product as a precursor to methamphetamine or another controlled illegal substance or if the person sells, transfers, distributes or dispenses the product with reckless disregard as to how the product will be used.

(1) Unlawful distribution of a methamphetamine precursor is a class ## felony for the first offense and a class ## felony for the second or subsequent offense.

(2) A retailer who is the general owner or operator of an establishment that sells pseudoephedrine, ephedrine, or phenylpropanolamine product(s) shall not be penalized pursuant to this section if the retailer documents that an employee training program was conducted to train employees on compliance with this section.

SEC. 102 POSSESSION OF METHAMPHETAMINE PRECURSOR

(a) A person is guilty of unlawful possession of a methamphetamine precursor when he knowingly and unlawfully possesses a product containing ephedrine, pseudoephedrine or phenylpropanolamine with intent to use the product as a precursor to methamphetamine or another controlled substance.

(b) Except as provided herein, possession of one or more products containing more than twenty-four (24) grams of ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers shall constitute prima facie evidence [*or a rebuttable presumption*] of the intent to use the product as a precursor to methamphetamine or another controlled substance. The prima facie evidence [*or rebuttable presumption*] established by this subsection (b) shall not apply to the following persons who are lawfully possessing the identified drug products in the course of legitimate business:

(1) a retail distributor of the drug products in section (b) *possessing a valid business license* or wholesaler;

(2) a wholesale drug distributor, or its agents, licensed by the Board of Pharmacy;

(3) a manufacturer of drug products in section (b), or its agents, licensed by the Board of Pharmacy;

(4) a pharmacist licensed by the Board of Pharmacy,

(5) a licensed healthcare professional possessing the drug products in section (b) in the course of carrying out his profession.

(c) Unlawful possession of a methamphetamine precursor is a Class ## felony for the first offense and a Class ## felony for the second or subsequent offense.

SEC. 103 APPLICATION TO POLITICAL SUBDIVISION OF STATE

(a) This Title is applicable and uniform throughout this state and in all counties, cities, towns and political subdivisions, whether incorporated or unincorporated therein. A county, city or town may not adopt or enforce any ordinance, pertaining to this Title, which prohibits conduct that is not prohibited under this chapter, or defining violations or penalties different from those provided under this chapter. However, this section does not preclude a county, city, town or political subdivision from revoking, canceling, suspending, or otherwise limiting a business or professional license it has issued for conduct that violates any provision of this chapter.

SEC. 104 EFFECTIVE DATE

This Title shall become effective 180 days following enactment.

TITLE II. "METHAMPHETAMINE WATCH" PROGRAM

SEC. 201 METHAMPHETAMINE WATCH

(a) Findings.

(1) ___ State finds that—

- i. "Meth Watch" is a voluntary program started in Kansas as a public-private partnership in 2001;
- ii. The program's goals are: to engage retailers, law enforcement, state and local agencies, and other key partners to reduce the diversion of precursor products for illicit manufacturing of methamphetamine; to increase community awareness about methamphetamine and to assist local communities in addressing the methamphetamine problem.
- iii. Since implementation Kansas has reported the following benefits: reduction in the number of methamphetamine labs; unifying communities while working to reduce drugs in society, safer stores, reduced losses due to theft of precursor products, and better relations between law enforcement and retail entities;

(b) Authorization Meth Watch Program:

(1) The "agency" shall develop and maintain a program to inform retailers about the methamphetamine problem in ___ state ___ and devise procedures and forms for retailers to use in reporting to the "agency" suspicious purchases, thefts or other transactions involving any products under the retailer's control which contain a regulated precursor under the provisions of this act including, but not limited to over-the-counter, nonprescription pseudoephedrine products.

(2) Reporting by retailers as required by this section shall be voluntary.

(3) Retailers participating in the Meth Watch program and reporting information to the "agency" in good faith pursuant to this section shall be immune from civil and criminal liability for a violation of this title.

(3) An appropriation of \$000.00 is authorized for FY 2005/6 to implement the Meth Watch program.

TITLE III--ENVIRONMENTAL PROTECTION

Sec. 301. Response to Environmental Hazards Associated with Illegal
Manufacture of Methamphetamine: Guidelines

Sec. 302 Grants to Cities and Counties

Sec. 303 Appropriation

SEC. 301 RESPONSE TO ENVIRONMENTAL HAZARDS ASSOCIATED WITH ILLEGAL MANUFACTURE OF METHAMPHETAMINE: GUIDELINES

- (a) The ___State___ Department of Health/Department of Public Safety shall develop guidelines for the clean-up of former clandestine methamphetamine drug labs by _____, 2005.
- (b) The guidelines shall be made available on the ___State___ Department of Health/Department of Public Safety internet web site and shall be available to law enforcement officials and the public upon request.
- (c) The guidelines shall be reviewed and updated annually.

SEC. 302 GRANTS TO COUNTIES AND CITIES

- (a) The ___State___ Department of Health/Department of Public Safety shall implement a grant program to assist local communities in their efforts to contain and clean-up clandestine methamphetamine laboratories and to preserve evidence for criminal trials.
- (b) The commissioner of health/public safety is the fiscal agent for the grant program and is responsible for receiving applications for grants and awarding grants under this section. Priority must be given to applicants with high incidences of clandestine methamphetamine lab operations in the applicant's narcotics task force area relative to the area's population.
- (c) Procedures for Grant Application
 - (1) A city or county may apply for a grant under this section by submitting an application to the commissioner of health/public safety on a form prescribed by the commissioner.
 - (2) To be eligible for a grant under this section, a city or county must:
 - (i) have a full-time fire and police service;
 - (ii) designate a methamphetamine lab containment team consisting of at least one police officer and one fire fighter;
 - (iii) have on staff at least two police officers trained by the federal Drug Enforcement Agency in methamphetamine lab containment and evidence collection. If a city does not have two officers with the training, it must agree to obtain training for at least two officers;

(iv) submit a plan for use of the grant funds that addresses how the city will evaluate and report on the activities of the methamphetamine lab containment team.

(3) A grant awarded under this section may be used for any methamphetamine lab containment team activities or expenditures including personnel costs, equipment, travel, and training.

SEC. 303 APPROPRIATION

(a) \$..... is appropriated in fiscal year 2005/6 from the general fund to the commissioner of health/public safety for grants under section 301 and section 302.

TITLE IV--EDUCATION, PREVENTION, AND TREATMENT

Sec. 401. Study regarding health effects of exposure to process of unlawful manufacture of methamphetamine.

Sec. 402. Grants for educational programs on prevention and treatment of methamphetamine abuse.

Sec. 403. Certain services for children.

Sec. 404. Child Endangerment

SEC. 401 STUDY REGARDING HEALTH EFFECTS OF EXPOSURE TO PROCESS OF UNLAWFUL MANUFACTURE OF METHAMPHETAMINE.

(a) With respect to the unlawful manufacturing of methamphetamine, the Department of Health/Public Safety shall research and develop a report finding:

(1) to what extent food, water, air, soil, equipment, or other matter becomes contaminated with methamphetamine or other harmful substances as a result of the proximity of the matter to the process of such manufacturing; and

(2) whether any adverse health conditions result from the exposure of individuals to such process or to contaminated matter within the meaning of paragraph (1).

(b) REPORT - Not later than one year after the date of the enactment of this Act, the Commissioner of Health/Public Safety shall complete the report under subsection (a) and submit to the legislature a report containing the findings.

SEC. 402 GRANTS FOR EDUCATIONAL PROGRAMS ON PREVENTION AND TREATMENT OF METHAMPHETAMINE ABUSE.

(a) The Department of Health/Department of Human Services shall implement a grant program to fund programs that educate communities, particularly parents, teachers, and

others who work with youth, concerning the early signs and effects of methamphetamine use, however, as a prerequisite to receiving funding, these programs shall--

- (1) prioritize methamphetamine prevention and education;
 - (2) have past experience in community coalition building and be part of an existing coalition that includes medical and public health officials, educators, youth-serving community organizations, and members of law enforcement;
 - (3) utilize professional prevention staff to develop research and science-based prevention strategies for the community to be served;
 - (4) demonstrate the ability to operate a community-based methamphetamine prevention and education program;
 - (5) establish prevalence of use through a community needs assessment;
 - (6) establish goals and objectives based on a needs assessment; and
 - (7) demonstrate measurable outcomes on a yearly basis.;
- (b) \$..... is appropriated in fiscal year 2005/6 from the general fund to the commissioner of health/human services for grants under section 402.

SEC. 403 METHAMPHETAMINE TREATMENT FUNDING FOR CHILDREN AND ADULTS

- (a) The Commissioner of Health/Human Services may make grants to counties and cities and to nonprofit private entities for the purpose of providing treatment for methamphetamine abuse, subject to subsection (b).
- (b) In addition to the purpose described in subsection (a), a grant under such subsection may be expended to treat children for any adverse health condition resulting from a qualifying methamphetamine-related exposure.
- (c) Definitions- For purposes of this section:
- (1) The term 'children' means individuals who are under the age of 18.
 - (2)(A) The term 'qualifying methamphetamine-related exposure', with respect to children, means exposure to methamphetamine or other harmful substances as a result of the proximity of the children to the process of manufacturing methamphetamine or the proximity of the children to associated contaminated matter.
 - (B) The term 'associated contaminated matter', with respect to the process of manufacturing methamphetamine, means food, water, air, soil, equipment, or other matter that is contaminated with methamphetamine or other harmful substances as a result of the proximity of the matter to such process.
- (d) Appropriations:
- (1) For the purpose of carrying out this section, \$.....is authorized for fiscal year 2005/6.
 - (2) Of the amount appropriated under paragraph (1) for a fiscal year, not less than \$..... shall be reserved for carrying out this section with respect to children.

SEC. 404 CHILD ENDANGERMENT

(a) A person who knowingly allows a child to be present within a structure where methamphetamine is being manufactured, is presumed to have neglected the child so as to adversely affect the child's health and welfare.

(b) A violation of subdivision (a) is a Class __ felony if the child is over six (6) years of age.

(c) A violation of subdivision (a) is a Class __ felony if the child is six (6) years of age or less.

TITLE V: CONDITIONS OF RELEASE

Section 501: Denial of bail for person arrested for manufacture of controlled substance

SEC. 501 DENIAL OF BAIL

A. No police officer or sheriff may release a person arrested for any violation of [insert proper code section relating to manufacturer of controlled substance], without the violator appearing before a magistrate, judge, or court. In determining bond, bail and other conditions of release, the magistrate, judge, or court shall consider any evidence that the person is in any manner dependent upon a controlled dangerous substance or has a pattern of regular, illegal use of any controlled dangerous substance. A rebuttable presumption that no condition(s) of release on bond would assure the safety of the community or any person therein shall arise if the state shows by a preponderance of the evidence:

1. The person was arrested for a violation of [insert section from A], relating to manufacturing or attempting to manufacture a controlled dangerous substance, or possessing any of the substances listed in [insert code section listing precursors of controlled substances] with the intent to manufacture a controlled dangerous substance; and
2. The person is in any manner dependent upon a controlled dangerous substance or has a pattern of regular illegal use of a controlled dangerous substance, and the violation referred to in paragraph 1 of this subsection was committed or attempted in order to maintain or facilitate the dependence or pattern of illegal use in any manner.

A Comprehensive Approach to Stem Methamphetamine Production and Abuse is the Right Solution

Scope of the Problem

Methamphetamine abuse is a serious law enforcement and public health problem that affects entire communities. While the Drug Enforcement Administration (DEA) states that a majority of the meth used in this country is produced in "super labs" in Mexico and California, about 20 percent is produced in small, toxic labs across the country. Although these labs generally yield only enough meth for the "cook's" own personal use, the hazardous and costly environmental impact can be devastating.

Meth can be made using a variety of household products that can be purchased from any retail outlet. The ingredients include pseudoephedrine (PSE), a safe and effective decongestant found in many over-the-counter (OTC) cough/cold/allergy medications. These products, used by millions of consumers and found in virtually every medicine cabinet in America, are a convenient and cost-effective aspect of the healthcare system. Researchers at Northwestern University recently concluded that OTC cough/cold/allergy medicines save the economy and the health care system nearly \$5 billion dollars a year. Instead of sitting in a doctor's waiting room for hours, in minutes a parent can visit a drugstore or grocery store and purchase a trusted and safe nonprescription medicine that has been available without a prescription for decades.

A Comprehensive Approach is the Solution

CHPA understands the scope and complexity of the methamphetamine problem and supports the need for a comprehensive, multi-disciplinary solution, including an increase in funding for law enforcement, tough restrictions on the sale and distribution of precursor chemicals, strict penalties for criminals using, producing and distributing meth, and programs focusing on demand reduction, education, and treatment. Effective anti-meth legislation should include the following:

- A retail sales limit of 6 grams for products that contain pseudoephedrine
- Elimination of the federal "blister pack" exemption
- In-store placement options for retailers to monitor and sell PSE drug products
- "Notice of Intent" to sell PSE requirement for any retailer
- Increased criminal penalties for meth traffickers
- Authorization and funding for community Meth Watch programs
- Funding for environmental cleanup, law enforcement, education, and training
- Community demand reduction programs
- Strong laws protecting drug-endangered children
- Enhanced tracking and monitoring of precursor chemical imports
- Denial of bail for meth lab operators

Placing Pseudoephedrine Behind the Counter is Not the Only Answer

There are effective means of preventing criminals from obtaining pseudoephedrine products without limiting access to consumers and their families. Putting medication behind the counter will decrease consumer access to these important medicines. If the product is placed behind a counter, consumers are prevented from reading and comparing package labels for dosing instructions, ingredients, and warnings. Additionally, shelf space behind the counter may be quite limited. Therefore, retailers will not be able to stock the wide variety of cold and allergy medicines that consumers need and expect.

Other states have taken less restrictive measures and have seen similar successes.

California: California has experienced a significant decline in the number of meth lab incidents over the past three years. According to the U.S. Drug Enforcement Administration (DEA), in 2002 California law enforcement reported 1769 meth lab incidents. That number declined to 1300 in 2003, a drop of 27%. In 2004 meth lab incidents decreased even more: preliminary data obtained from the DEA on January 6, 2005, shows that number declining to 639 meth lab incidents in 2004, a reduction of more than 50%.

California statute places a 3 package/9 gram limit on each retail transaction of pseudoephedrine and ephedrine (exemption for pediatric products). The statute preempts all local ordinances so there is only one state-wide framework for retailers to apply to their stores in different communities across the state.

California also has taken significant steps toward tracking the supply-chain of pseudoephedrine and ephedrine sales. There are extensive requirements for both the registration and reporting by those individuals or companies that distribute pseudoephedrine and ephedrine products. California also requires recordkeeping and reporting of transactions involving sales of threshold amounts of pseudoephedrine and ephedrine. These requirements provide legitimate business the opportunity to continue to supply the public with needed medication while allowing law enforcement to track and eliminate less than legitimate distributors of these products.

Washington: Since adopting anti-meth legislation in 2001, Washington has seen a similar reduction in the number of meth lab incidents. In 2002 Washington recorded 1409 meth lab incidents and that number decreased to 1032 in 2003, a decline of 27%. Furthermore, between 2003 and 2004 meth lab incidents declined by an additional 34%, to 687 incidents in 2004.

The Washington statute restricts pseudoephedrine and ephedrine sales to 3 package/9 grams per retail transaction and prohibits an individual from purchasing more than 9 grams in a 24 hour period. Washington also exempts pediatric products and preempts local ordinances regulating the sale of pseudoephedrine and ephedrine products.

Furthermore, Washington has been proactive in tracing the path pseudoephedrine and ephedrine products take in the state. Reports must be submitted to the state Board of Pharmacy by manufacturers, wholesalers and retailers on pseudoephedrine and ephedrine sales and transfers and the receipt of same from out-of-state sources. Proper identification is also required for the wholesale purchase of these substances.

Washington further requires that manufacturers and wholesalers must report suspicious transactions in writing to the Board of Pharmacy and are required to maintain records of pseudoephedrine and ephedrine sales. In 2003 Washington adopted legislation which requires retailers to register with the state Department of Health and retailers may only purchase pseudoephedrine and ephedrine from wholesalers or manufacturers licensed by the Department of Health. If the retailer violates this provision then it will receive a warning from the Board of Pharmacy and if that retailer commits a subsequent violation, the Board of Pharmacy may suspend or revoke their registration. If a retailer purchases from an unlicensed wholesaler then that retailer will be subject to percentage-of-sales and record-keeping requirements.

In addition to their comprehensive legislation, Washington has a successful Meth Watch program in place. Started in 2001 in Spokane County, Meth Watch is now available in over 90% of the counties in Washington. In Spokane County, meth lab busts dropped from almost 250 in 2001 to less than 10 in 2004. It is evident that education and awareness programs along with comprehensive legislation can help reduce methamphetamine production.

Kansas: While multi-faceted legislation is the key, education is a proven tool in reducing methamphetamine production. Kansas is the home of the nationally recognized Meth Watch program. Developed in 2001 with federal grant money, Meth Watch was started as a public-private partnership between the Kansas Department of Health and Environment, the Kansas Bureau of Investigation, the Kansas Methamphetamine Prevention Project (part of the non-profit statewide drug prevention system), and Kansas retailers. To date, over thirteen states have or are in the process of developing Meth Watch programs. Since 2001, meth lab busts in Kansas have dropped from 846 to 561, an almost 40% decline.

Demand Reduction and Education Are Essential to Reducing Meth Abuse

With 80 percent of meth coming from super labs or imported in bulk form, meth is cheap and readily available on the streets. Experts report that reducing the demand for this addictive drug is the most important element to any anti-meth effort. To assist in demand-reduction efforts, CHPA currently is engaged in the second year of an innovative program with the Partnership for a Drug-Free America, the American Academy of Pediatrics, and Drug Enforcement Administration. The initiative seeks to use pediatricians and the media to help communicate to young people the health consequences of meth use, thereby reducing its demand. The campaign targets parents and teens in two test markets, Phoenix, Arizona, and St. Louis, Missouri, and features

both public relations and public service advertising. The first year of the campaign was successfully devoted to increasing the perception of risk about meth and Ecstasy among parents and teens. This second year of the campaign is focused on prompting parents to talk to their children about the dangers of meth.

Finding the Balance

CHPA believes that Congress and state legislatures should balance the need to restrict access to meth precursor chemicals and a family caregiver's need to purchase cost-effective OTC cold and allergy medicines. There is no quick fix to the meth problem. Legislators should pass comprehensive measures that keep meth cooks off the streets and provide support for law enforcement, lab cleanup, demand reduction, education, and treatment.

For additional information on federal legislation, contact Kevin J. Kraushaar, Vice President, Government Relations, or Mike Becker, Legislative Assistant. For state legislation, contact Jennifer Hawks Bland, Director, State Government Relations, or Libby Dannenberg, State Relations Counsel.

Consumer Healthcare Products Association

202-429-9260

202-223-6835 (fax)

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DIVISION OF OCCUPATIONAL LICENSING

Frank H. Markowski, Governor

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February 3, 2005

The Honorable Peggy Wilson
 Chair, House HESS Committee
 State Capitol Room 108
 Juneau, Alaska 99801-1182

Dear Representative Wilson:

As Chair of the Alaska State Board of Pharmacy and a practicing pharmacist, I am writing in support of the enactment of legislation to regulate the sale of "pseudoephedrine" which has become a common source of misuse in the production of methamphetamine in illegal "meth labs" in Alaska as well as elsewhere. As you may know, pseudoephedrine is the same of the decongestant in non-prescription (and some prescription) cold and sinus medications (e.g. Sudafed). It is sold in pharmacies, grocery stores, convenience stores, etc.

A recent Associated Press news article from the *Arizona Republic* dated January 20, 2005 described Oklahoma's success in decreasing meth lab seizures by 80 percent from April to November of 2004 after laws to "lock up" the pseudoephedrine were enacted. An article in the *Anchorage Daily News* (excerpted from *The New York Times*) of Sunday, January 30, 2005 also addresses the subject. It appears that this approach is being considered and acted upon by states across the nation.

Pseudoephedrine is a safe and effective decongestant that needs to be available to the public, so a total ban of the substance is definitely NOT in order. What is being suggested is legislation to restrict sales exclusively to pharmacies. The product would be kept "behind the counter". It would not require a prescription, but personal identification and a signature would be required of the consumer; also there would be a limit on quantity purchased.

At the Board of Pharmacy's January 27-28, 2005 meeting, the board determined to encourage such an approach as a public safety measure. The Board of Pharmacy believes that any potential inconvenience to consumers or pharmacists would be heavily outweighed by the potential safety it would provide by shutting off the supply of a major ingredient for the illegal production of methamphetamine.

The Board of Pharmacy supports this approach and hopes that such legislation could be enacted expeditiously.

Thank you for your consideration of this matter.

Cindy Buelor

Sincerely,

Cindy Buelor

Cindy Buelor, Chair
 Alaska Board of Pharmacy

Citations: "One State's Effort to Curb Meth Labs May Spur Others", *Arizona Republic*, Jan 20, 2005, p.A4.
 "States Try to Fight Illegal Drug by Limiting Its Legal Source", *Anchorage Daily News*, Jan 30, 2005, p.A3.

P.O. Box 110806, Juneau, Alaska 99811-0806

Telephone: (907) 465-2534 Fax: (907) 465-2974 Text Telephone: (907) 465-5437

Email: licensing@commerce.state.ak.us Website: <http://www.commerce.state.ak.us/oc/>

Douglas Owen

From: Robert Larango [nofire@alaska.net]
Sent: Wednesday, February 16, 2005 11:30 AM
To: Rep. Jay Ramras
Cc: Rep. David Guttenberg; Sen. Ralph Seekins
Subject: Pseudoephedrine Bill

Representative Ramras,

My name is Bob Larango, I own Northern Fire & Safety Inc here in Fairbanks. We sell pseudoephedrine products, along with a full line of first aid products for customers first aid kits refills.

I read about your bill in the News Miner. It looks and sounds great, for window dressing, but it is a redundancy of a Federal DEA Law that is already required.

In order for my company to sell any pseudoephedrine products, we had to file for a DEA Chemical Registration Number. We needed this number to buy products from the supplier. We went through a site visit with a DEA officer, and a complete training process. They actually flew in an officer from Anchorage, and this took atleast 6 hours of my time. We can't sell more than 3 gram packages, or more 9 grams in 30 days to any one customer. These transactions can only be done on a face to face basis. We are required to ID any unknown customers, and required to notify the DEA of suspicious buyers. We are also required to keep a log of sales. If we violate this or the many other requirements we are subject to loss of our number and very large federal fines.

If you want more information about the federal law here is the address:

**U.S. Department of Justice
Drug Enforcement Administration
Office of Diversion Control
2401 Jefferson-Davis Highway
Alexandria VA 22301**

Ann Hensler (202) 307-4670

You had campaigned about taking common sense idea's to Juneau. I just don't see how a state law mirroring a federal law makes anything any better.

Other than creating another level of bureaucracy for business like this to conform to, and hiring more state employees to handle the paperwork.

If you think .05% of the buyers are buying the pseudoephedrine products illegally from drug stores, chain store or business such as mine please contact the DEA. The large chain stores might be in violate of the law. I'm a sure a DEA visit, along with loss of privileges and the fines would bring them into compliance. The amount of pseudoephedrine tablets required to make methamphetamine is actually very sizeable. I find it hard to believe the root of the problem is meth makers sending in hundreds of addicts to buy 3 boxes of cold pills each in order to make a quantity worth selling.

I have been promised an ephedrine and pseudoephedrine free cold medication by my suppliers which would get my company out of all the regulations required in order to conduct business with my customers. The existing law does make it hard on my larger accounts. One gold mine has 500 employees but can only purchase 3 boxes of cold medication per month from us.

I carbon copied this to both my Senator and House Rep. I urge you to not support this bill.

Sincerely,
Robert Larango
452-5353

2/16/2005

Douglas Owen

From: Lisa Harbo [lisa_harbo@yahoo.com]
Sent: Tuesday, February 15, 2005 4:54 PM
To: Rep. Jay Ramras
Subject: HB 149 Methamphetamine Bill

Dear Representative Ramras,

Thank you for sponsoring HB 149 Sale of Methamphetamine and Precursors. The methamphetamine problem in interior Alaska is terrible. There have been numerous clandestine methamphetamine activities in the area where I live off Farmer's Loop. The troopers cleaned up one of the labs in late September. What comes with clandestine methamphetamine labs and methamphetamine use? Fast, aggressive drivers. Trash along the road. Mail theft. Burglaries. Odd suffocating chemical smells in your neighborhood.

Paranoid, angry-looking people glaring and staring at you coldly. Loose pit bulls. Being chased by drivers in cars, on four-wheelers, or on snowmachines. Being threatened to mind your own business. Being shot at.

Having to move out of the neighborhood for your family's safety. And probably Being murdered (the only one that we haven't seen here, yet). It isn't good; in fact, it's all bad. So, thank you. Please don't use my name or address - it's still not good here.

Sincerely,

Lisa Harbo
820 Capricorn Street
Fairbanks, AK 99709

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Questions for Todd Sharp at DPS

- (1) What would DPS like to see for store recording requirements concerning pseudoephedrine purchases?

The retailer or their employee would be required to maintain a record of all sales for any quantity of pseudoephedrine. The following is information that would be recorded by the retailer or their employee; date of purchase, quantity and name of product dispensed, name of purchaser(s), valid ID or drivers license number of the person(s) making the purchase, the purchasers signature.

This record will need to be kept readily available for inspection by the Department of Public Safety or other law enforcement agencies without prior notice. Records are to be kept separate from all other transactions, and will be kept for a period of 3 years. Records may be copied by the Department of Public Safety or other law enforcement agencies or the record could be seized as evidence.

- (2) Should there be monthly reporting on pseudoephedrine sales? If so, where should the central location be for reporting this information? Will monthly reporting cause a large fiscal note?

No, DPS does not feel that retailers need to provide monthly reporting on pseudoephedrine sales at this time. Allowing law enforcement to have unobstructed access to the records for review would be sufficient for the purpose of investigation. Investigators need this information in a timely manner and creating a data base that could supply the information quickly would not be practical in many areas of the state.

Monthly reporting would create an indeterminate fiscal impact.

In what manner could reporting be done that would minimize fiscal impact to the department?

How frequently should reporting be required? Quarterly? Monthly?

How will law enforcement ensure individuals are not exceeding the purchase limits if no reporting is required? Individuals may very well purchase more than the limit of pseudoephedrine in a 30 day period even if there was an electronic central registry keeping track of the information. The Department of public Safety feels that the simple requirement for requiring that identification be shown and documented at the time of a purchase will deter violations. Records of purchases will receive reviews by state and local law enforcement to locate and investigate violations.

- (3) Can methamphetamine be made from drugs containing liquid pseudoephedrine? If so, should records be kept on drugs containing liquid pseudoephedrine?

There is a potential that someone will figure out how to extract pseudoephedrine from liquid form, but presently they are not and we do not know of any such activity. No records are needed for liquid.

How common is it for clandestine labs in Alaska to use liquid forms of pseudoephedrine in manufacturing meth? None.

AS 11.51.100. Endangering the welfare of a child in the first degree.

(a) A person commits the crime of endangering the welfare of a child in the first degree if, being a parent, guardian, or other person legally charged with the care of a child under 16 years of age, the person

(1) intentionally deserts the child in a place under circumstances creating a substantial risk of physical injury to the child;

(2) leaves the child with another person who is not a parent, guardian, or lawful custodian of the child knowing that the person

(A) is registered or required to register as a sex offender under AS 12.63 or a law or ordinance in another jurisdiction with similar requirements;

(B) has been charged by complaint, information, or indictment with a violation of AS 11.41.410 - 11.41.455 or a law or ordinance in another jurisdiction with similar elements; or

(C) has been charged by complaint, information, or indictment with an attempt, solicitation, or conspiracy to commit a crime described in (B) of this paragraph; or

(3) leaves the child with another person knowing that the person has previously physically mistreated or had sexual contact with any child, and the other person causes physical injury or engages in sexual contact with the child.

(b) A person commits the crime of endangering the welfare of a minor in the first degree if the person transports a child in a motor vehicle, aircraft, or watercraft while in violation of AS 28.35.030.

(c) In this section, "physically mistreated" means

(1) having committed an act punishable under AS 11.41.100 - 11.41.250; or

(2) having applied force to a child that, under the circumstances in which it was applied, or considering the age or physical condition of the child, constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation because of the substantial and unjustifiable risk of

(A) death;

(B) serious or protracted disfigurement;

(C) protracted impairment of health;

(D) loss or impairment of the function of a body member or organ;

(E) substantial skin bruising, burning, or other skin injury;

(F) internal bleeding or subdural hematoma;

(G) bone fracture; or

(H) prolonged or extreme pain, swelling, or injury to soft tissue.

(d) Endangering the welfare of a child in the first degree under (a)(3) of this section is a

(1) class B felony if the child dies;

(2) class C felony if the child suffers sexual contact, sexual penetration, or serious physical injury; or

(3) class A misdemeanor if the child suffers physical injury.

(e) Endangering the welfare of a child under (b) of this subsection is a class A misdemeanor.

(f) Endangering the welfare of a child in the first degree under (a)(1) or (2) of this section is a class C felony.

Sec. 11.51.110. Endangering the welfare of a child in the second degree.

(a) A person commits the crime of endangering the welfare of a child in the second degree if the person, while caring for a child under 10 years of age,

(1) causes or allows the child to enter or remain in a dwelling or vehicle in which a controlled substance is stored in violation of AS 11.71; or

(2) is impaired by an intoxicant, whether or not prescribed for the person under AS 17.30, and there is no third person who is at least 12 years of age and not impaired by an intoxicant present to care for the child.

(b) In this section,

(1) "impaired" means that a person is unconscious or a person is physically or mentally affected so that the person does not have the ability to care for the basic safety or personal needs of a child with the caution characteristic of a sober person of ordinary prudence;

(2) "intoxicant" has the meaning given in AS 47.10.990.

(c) Endangering the welfare of a child in the second degree is a violation.

AS 11.51.130. Contributing to the delinquency of a minor.

(a) A person commits the crime of contributing to the delinquency of a minor if, being 19 years of age or older or being under 19 years of age and having the disabilities of minority removed for general purposes under AS 09.55.590, the person aids, induces, causes, or encourages a child

(1) under 18 years of age to do any act prohibited by state law unless the child's disabilities of minority have been removed for general purposes under AS 09.55.590;

(2) under 18 years of age or allows a child under 18 years of age to enter or remain in the immediate physical presence of the unlawful manufacture, use, display, or delivery of a controlled substance knowing that the manufacture, use, display, or delivery is occurring, unless the child's disabilities of minority have been removed for general purposes under AS 09.55.590;

(3) under 16 years of age to be repeatedly absent from school, without just cause; or

(4) under 18 years of age to be absent from the custody of a parent, guardian, or custodian without the permission of the parent, guardian, or custodian or without the knowledge of the parent, guardian, or custodian, unless the child's disabilities of minority have been removed for general purposes under AS 09.55.590 or the person has immunity under AS 47.10.350 or 47.10.398(a); it is an affirmative defense to a prosecution under this paragraph that, at the time of the alleged offense, the defendant

(A) reasonably believed that the child was in danger of physical injury or in need of temporary shelter; and

(B) within 12 hours after taking the actions comprising the alleged offense, notified a peace officer, a law enforcement agency, or the Department of Health and Social Services of the name of the child and the child's location.

(b) Contributing to the delinquency of a minor is a class A misdemeanor.

AS 11.71.020. Misconduct involving a controlled substance in the second degree.

(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, 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.

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

(c) Misconduct involving a controlled substance in the second degree is a class A felony.

AS 11.71.030. Misconduct involving a controlled substance in the third degree.

(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.

(b) It is an affirmative defense to a prosecution under (a)(3)(A) of this section that the prohibited conduct took place entirely within a private residence located within 500 feet of the school grounds or recreation or youth center, and that the prohibited conduct did not involve distributing, dispensing, or possessing with the intent to distribute or dispense a controlled substance for profit. Nothing in this subsection precludes a prosecution under any other provision of this section or any other section of this chapter.

(c) Misconduct involving a controlled substance in the third degree is a class B felony.

AS 11.71.180. Schedule VA.

(a) A substance shall be placed in schedule VA if it is found under AS 11.71.120(c) to have a degree of danger or probable danger to a person or the public which is less than substances listed in schedule IVA, but higher than substances listed in schedule VIA.

(b) Schedule VA includes any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or their salts, calculated as the free anhydrous base or alkaloid, in limited quantities as specified in (1) - (6) of this subsection, which includes one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by schedule IA substances alone:

(1) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(2) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(3) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(4) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(6) not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) [Repealed, § 1 ch 66 SLA 1987.]

(d) Schedule VA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation that contains any quantity of the narcotic drug buprenorphine and its salts.

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

(1) propylhexedrine, except when contained in a Bensedrex inhaler;

(2) pyrovalerone.

History

(§ 2 ch 45 SLA 1982; am § 1 ch 66 SLA 1987; am § 10 ch 76 SLA 1990)

AS 11.71.900. Definitions.

In this chapter, unless the context clearly requires otherwise,

- (1) "administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means into the body of a patient or research subject by
 - (A) a practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or
 - (B) the patient or research subject at the direction and in the presence of a practitioner;
- (2) "agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser, but does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman;
- (3) "committee" means the Controlled Substances Advisory Committee established in AS 11.71.100;
- (4) "controlled substance" means a drug, substance, or immediate precursor included in the schedules set out in AS 11.71.140 - 11.71.190;
- (5) "counterfeit substance" means a controlled substance which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed the substance and which falsely purports or is represented to be the product of, or to have been distributed by, the other manufacturer, distributor, or dispenser;
- (6) "deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance whether or not there is an agency relationship;
- (7) "dispense" means to deliver a controlled substance to an ultimate user or research subject by or under the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery; "dispenser" means a practitioner who dispenses;
- (8) "distribute" means to deliver other than by administering or dispensing a controlled substance, whether or not there is any money or other item of value exchanged; it includes sale, gift, or exchange; "distributor" means a person who distributes;
- (9) "drug"
 - (A) means
 - (i) a substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to these publications;
 - (ii) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;
 - (iii) a substance, other than food, intended to affect the structure or any function of the body of humans or animals; and
 - (iv) a substance intended for use as a component of any article specified in (i), (ii), or (iii) of this subparagraph;
 - (B) does not include a device or its components, parts, or accessories;
- (10) "hashish" means the dried, compressed, resinous product of the plant (genus) Cannabis;

(11) "hashish oil" means the viscous liquid concentrate of tetrahydrocannabinols extracted from the plant (genus) Cannabis;

(12) "immediate precursor" means a substance which is by statute or regulation designated as the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture of that controlled substance;

(13) "manufacture"

(A) means the production, preparation, propagation, compounding, conversion, growing, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; however, the growing of marijuana for personal use is not manufacturing;

(B) includes the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance or its container unless done in conformity with applicable federal law

(i) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(ii) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(14) "marijuana" means the seeds, and leaves, buds, and flowers of the plant (genus) Cannabis, whether growing or not; it does not include the resin or oil extracted from any part of the plants, or any compound, manufacture, salt, derivative, mixture, or preparation from the resin or oil, including hashish, hashish oil, and natural or synthetic tetrahydrocannabinol; it does not include the stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the stalks, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination;

(15) "opiate" means

(A) a substance having an addiction-forming or addiction-sustaining capability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining capability; and

(B) includes its racemic and levorotatory forms; but

(C) does not include the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan);

(16) "opium poppy" means the plant of any species of Papaver containing the phenanthrine alkaloids of opium, except its seeds;

(17) "peyote" means any part of the plant classified botanically as Lophophora Williamsii Lemaire, whether growing or not, the seeds of the plant, any extract from any part of the plant, and a compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or extracts, including mescaline;

(18) "poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;

(19) "practitioner" means

(A) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect

to, or to administer or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in the state;

(B) a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in the state;

(20) "recreation or youth center" means a building, structure, athletic playing field, or playground run or created by a municipality or the state to provide athletic, recreational, or leisure activities for minors.

(21) "sale" means to sell, barter, exchange, give, or dispose of to another, or an exchange for a thing of value;

(22) "schedule IA controlled substance" means a controlled substance included in the schedule in AS 11.71.140;

(23) "schedule IIA controlled substance" means a controlled substance included in the schedule in AS 11.71.150;

(24) "schedule IIIA controlled substance" means a controlled substance included in the schedule in AS 11.71.160;

(25) "schedule IVA controlled substance" means a controlled substance included in the schedule in AS 11.71.170;

(26) "schedule VA controlled substance" means a controlled substance included in the schedule in AS 11.71.180;

(27) "schedule VIA controlled substance" means a controlled substance included in the schedule in AS 11.71.190;

(28) "school bus" means a motor vehicle operated by a school district or private school, directly or by contract, to transport students;

(29) "school grounds" means a building, structure, athletic playing field, playground, parking area, or land contained within the real property boundary line of a public or private preschool, elementary, or secondary school.

(30) "ultimate user" means a person who lawfully possesses a controlled substance for the person's own use or for the use of a member of the person's household or for administering to an animal owned by the person or by a member of the person's household.

History

(§ 2 ch 45 SLA 1982; am § 41 ch 6 SLA 1984; am § 5 ch 63 SLA 1991; am § 5 ch 70 SLA 1994)

Annotations

Revisor's notes. Paragraphs in this section were renumbered in 1991 and 1994 as necessary to reflect the enactment of paragraphs (20) and (29) - (30) and maintain alphabetical order.

Cross references. For definition of terms used in this title, see AS 11.81.900.

AS 12.55.125. Sentences of imprisonment for felonies.

(a) A defendant convicted of murder in the first degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years. A defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

(1) the defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, fire fighter, or correctional employee who was engaged in the performance of official duties at the time of the murder;

(2) the defendant has been previously convicted of

(A) murder in the first degree under AS 11.41.100 or former AS 11.15.010 or 11.15.020;

(B) murder in the second degree under AS 11.41.110 or former AS 11.15.030; or

(C) homicide under the laws of another jurisdiction when the offense of which the defendant was convicted contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110;

(3) the court finds by clear and convincing evidence that the defendant subjected the murder victim to substantial physical torture; or

(4) the defendant is convicted of the murder of and personally caused the death of a person, other than a participant, during a robbery.

(b) A defendant convicted of attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 10 years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470.

(c) Except as provided in (i) of this section, a defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to the following presumptive terms, 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, five years;

(2) if the offense is a first felony conviction

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

- (B) for manslaughter and the conduct resulting in the conviction was knowingly directed towards a child under the age of 16, seven years;
- (C) for manslaughter and the conduct resulting in the conviction involved driving while under the influence of an alcoholic beverage, inhalant, or controlled substance, seven years;
- (3) if the offense is a second felony conviction, 10 years;
- (4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (1) of this section, 15 years.
- (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 the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:
 - (1) if the offense is a second felony conviction, four years;
 - (2) if the offense is a third felony conviction, six years.
- (e) Except as provided in (i) of this section, a defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:
 - (1) if the offense is a second felony conviction, two years;
 - (2) if the offense is a third felony conviction, three years;
 - (3) if the offense is a first felony conviction, and the defendant violated AS 08.54.720(a)(15), one year
- (f) If a defendant is sentenced under (a) or (b) of this section,
 - (1) imprisonment for the prescribed minimum or mandatory term may not be suspended under AS 12.55.080;
 - (2) imposition of sentence may not be suspended under AS 12.55.085;
 - (3) imprisonment for the prescribed minimum or mandatory term may not be reduced, except as provided in (j) of this section.
- (g) If a defendant is sentenced under (c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(3), or (i) of this section, except to the extent permitted under AS 12.55.155 - 12.55.175,
 - (1) imprisonment may not be suspended under AS 12.55.080;
 - (2) imposition of sentence may not be suspended under AS 12.55.085;
 - (3) terms of imprisonment may not be otherwise reduced.
- (h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge except as specifically provided. Nothing in (a) of this section limits the court's discretion to impose a sentence of 99 years imprisonment, or to limit parole eligibility, for a person convicted of murder in the first or second degree in circumstances other than those enumerated in (a).
- (i) A defendant convicted of
 - (1) sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 40 years and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:
 - (A) if the offense is a first felony conviction and does not involve circumstances described in (B) of this paragraph, eight years;

- (B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 10 years;
- (C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 15 years;
- (D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 20 years;
- (E) if the offense is a third felony conviction and the defendant is not subject to sentencing under (F) of this paragraph or (I) of this section, 25 years;
- (F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (I) of this section, and the defendant has two prior convictions for sexual felonies, 30 years;
- (2) attempt, conspiracy, or solicitation to commit sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 30 years and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:
- (A) if the offense is a first felony conviction and does not involve circumstances described in (B) of this paragraph, five years;
- (B) if the offense is a first felony conviction, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 10 years;
- (C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 10 years;
- (D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 15 years;
- (E) if the offense is a third felony conviction, does not involve circumstances described in (F) of this paragraph, and the defendant is not subject to sentencing under (I) of this section, 15 years;
- (F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (I) of this section, and the defendant has two prior convictions for sexual felonies, 20 years;
- (3) sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography may be sentenced to a definite term of imprisonment of not more than 20 years and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:
- (A) if the offense is a second felony conviction and does not involve circumstances described in (B) of this paragraph, five years;
- (B) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 10 years;
- (C) if the offense is a third felony conviction, does not involve circumstances described in (D) of this paragraph, 10 years;
- (D) if the offense is a third felony conviction, and the defendant has two prior convictions for sexual felonies, 15 years;
- (4) sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography, or attempt, conspiracy, or solicitation to commit sexual

assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography, may be sentenced to a definite term of imprisonment of not more than 10 years and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a second felony conviction and does not involve circumstances described in (B) of this paragraph, two years;

(B) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, three years;

(C) if the offense is a third felony conviction and does not involve circumstances described in (D) of this paragraph, three years;

(D) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, six years.

(j) A defendant sentenced to a (1) mandatory term of imprisonment of 99 years under (a) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving one-half of the mandatory term without consideration of good time earned under AS 33.20.010, or (2) definite term of imprisonment under (l) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving the greater of (A) one-half of the definite term or (B) 30 years. A defendant may not file and a court may not entertain more than one motion for modification or reduction of a sentence subject to this subsection, regardless of whether or not the court granted or denied a previous motion.

(k) A first felony offender convicted of an offense for which a presumptive term of imprisonment is not specified under this section

(1) may be sentenced to a term of unsuspended imprisonment that exceeds the presumptive term for a second or third felony offender convicted of the same crime if the offender is convicted of criminally negligent homicide and the victim is a child under the age of 16;

(2) except as provided in (1) of this subsection, may not be sentenced to a term of unsuspended imprisonment that exceeds the presumptive term for a second felony offender convicted of the same crime unless the court finds by clear and convincing evidence that an aggravating factor under AS 12.55.155(c) is present, or that circumstances exist that would warrant a referral to the three-judge panel under AS 12.55.165.

(l) Notwithstanding any other provision of law, a defendant convicted of an unclassified or class A felony offense, and not subject to a mandatory 99-year sentence under (a) of this section, shall be sentenced to a definite term of imprisonment of at least 40 years but not more than 99 years when the defendant has been previously convicted of two or more most serious felonies and the prosecuting attorney has filed a notice of intent to seek a definite sentence under this subsection at the time the defendant was arraigned in superior court. If a defendant is sentenced to a definite term under this subsection,

(1) imprisonment for the prescribed definite term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed definite term may not be reduced, except as provided in (j) of this section.

(m) Notwithstanding (a)(4) and (f) of this section, if a court finds that imposition of a mandatory term of imprisonment of 99 years on a defendant subject to sentencing under (a)(4) of this section would be manifestly unjust, the court may sentence the defendant to a definite term of imprisonment otherwise permissible under (a) of this section.

History

(§ 12 ch 166 SLA 1978; am § 18 ch 45 SLA 1982; am §§ 28 - 30 ch 143 SLA 1982; am § 8 ch 78 SLA 1983; am §§ 1 - 3 ch 92 SLA 1983; am § 5 ch 59 SLA 1988; am § 4 ch 37 SLA 1989; am §§ 23 - 25 ch 79 SLA 1992; am § 5 ch 3 SLA 1994; am §§ 1, 2, 6 ch 6 SLA 1996; am §§ 3 - 7 ch 7 SLA 1996; am § 8 ch 30 SLA 1996; am § 4 ch 33 SLA 1996; am §§ 9 - 11 ch 54 SLA 1999; am § 1 ch 65 SLA 1999; am §§ 1, 2 ch 49 SLA 2000; am § 4 ch 60 SLA 2002; am §§ 1 - 5 ch 90 SLA 2003; am § 5 ch 99 SLA 2004)

Annotations

Cross references. For classification of felonies and misdemeanors, see AS 11.81.250; for authorized fines, see AS 12.55.035; for reduction of sentence for good behavior, see AS 33.20.010; for effect of the enactment of (j) of this section on Alaska Rule of Criminal Procedure 35, see § 34, ch. 79, SLA 1992 in the Temporary and Special Acts; for findings related to the addition of subsection (l), see § 1, ch. 7, SLA 1996 in the Temporary and Special Acts; for the effect of amendments to (j) of this section made by ch. 7, SLA 1996 on Alaska Rule of Criminal Procedure 35, see § 20, ch. 7, SLA 1996 in the Temporary and Special Acts. For applicability provisions relating to the 1999 amendment of subsection (b) by § 9, ch. 54, SLA 1999, and relating to the 1999 amendment of subsections (c) and (k), see § 16, ch. 54, SLA 1999 in the 1999 Temporary & Special Acts. For applicability provisions relating to the 1999 amendment of subsection (b) by § 1, ch. 65, SLA 1999, see § 2, ch. 64, SLA 1999 in the 1999 Temporary & Special Acts. For applicability provisions relating to the 2000 amendment of subsection (a) by sec. 1, ch. 49, SLA 2000, and the addition of subsection (m) by sec. 2, ch. 49, SLA 2000, see sec. 3, ch. 49, SLA 2000 in the 2000 Temporary & Special Acts.

Administrative Code. - For eligibility for discretionary parole, see 22 AAC 20, art. 1.

Effect of amendments. The 1992 amendment, effective September 14, 1992, in subsection (a), added the second sentence and paragraphs (1) to (3); added the second sentence in subsection (h); and added subsections (j) and (k).

The 1994 amendment, effective May 30, 1994, inserted "conspiracy to commit murder in the first degree," in subsection (b).

The first 1996 amendment, effective June 27, 1996, substituted "correctional employee" for "correctional officer" in paragraphs (a)(1) and (c)(2) and repealed paragraphs (d)(3) and (e)(3).

The second 1996 amendment, effective June 27, 1996, in paragraphs (c)(4) and (i)(4), inserted "and the defendant is not subject to sentencing under (l) of this section"; in subsection (f), inserted "or mandatory" in paragraphs (1) and (2), and in paragraph (3), deleted "otherwise" preceding "reduced" and added ", except as provided in (j) of this section"; in (j), inserted "(1)," "once," and all of the language following "AS 33.20.010"; and added subsection (l).

The third 1996 amendment, effective May 16, 1996, inserted a section reference in subsection (g).

The fourth 1996 amendment, effective May 23, 1996, made a section reference substitution in paragraph (e)(4).

The first 1999 amendment, effective June 5, 1999, in subsection (b), inserted "solicitation to commit murder in the first degree" in the first sentence and added the third and fourth sentences; and added subparagraph (c)(2)(B), the subparagraph (c)(2)(A) designation, paragraph (k)(1), the paragraph (k)(2) designation, and "except as provided in (1) of this subsection" at the beginning of paragraph (k)(2).

The second 1999 amendment, effective September 20, 1999, in subsection (b) deleted "murder in the second degree," following "convicted of" in the first sentence and added the second sentence.

The 2000 amendment, effective August 9, 2000, added paragraph (a)(4) and made related stylistic changes, and added subsection (m).

The 2002 amendment, effective July 1, 2002, added subparagraph (c)(2)(C).

The 2003 amendment, effective September 11, 2003, added "Except as provided in (i) of this section" at the beginning of subsections (c)-(e); substituted "(e)(3)" for "(e)(4)" in subsection (g); rewrote subsection (i); and made stylistic changes.

The 2004 amendment, effective July 23, 2004, substituted "subsection" for "section" at the end of the introductory language of subsection (l).

Editor's notes. Section 7, ch. 6, SLA 1996 provides that the repeal of (d)(3) and (e)(3) and the amendments to (a) and (c) of this section made by ch. 6, SLA 1996 apply "to all offenses committed on or after June 27, 1996." Section 19, ch. 7, SLA 1996 provides that references to prior or previous convictions in ch. 7, SLA 1996, which amended subsections (c), (f), (i), and (j) and added subsection (l), "apply to all convictions occurring before, on, or after June 27, 1996."

Subsection (b) was amended by § 9, ch. 54, SLA 1999, with an effective date of June 5, 1999, and was further amended by § 1, ch. 65, SLA 1999, with a later effective date of September 20, 1999. Thus, on and after June 5 and before September 20, 1999, subsection (b) read as follows: "A defendant convicted of murder in the second degree, attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470."

Section 12(a), ch. 90, SLA 2003 provides that the provisions of §§ 1 - 5, ch. 90, SLA 2003 amending this section apply "to sentencings for offenses committed on or after September 11, 2003," and that "[a]ll references to prior or previous convictions in [that section] apply to convictions occurring before, on, or after September 1, 2003."

Chapter 17.30. CONTROLLED SUBSTANCES

Article 01. REGULATION OF MANUFACTURE, DISTRIBUTION, PRESCRIPTION, AND DISPENSING OF CONTROLLED SUBSTANCES

Sec. 17.30.010. Regulations. [Repealed, Sec. 22 ch 146 SLA 1986].

Repealed or Renumbered

Sec. 17.30.020. Registration requirements; inspections.

(a) A person who manufactures, distributes, dispenses, or conducts research with a controlled substance in the state or who proposes to manufacture, distribute, or dispense a controlled substance in the state, shall comply with the registration requirements of 21 U.S.C. 811 - 830 (Controlled Substances Act), and the regulations adopted under those sections.

(b) A person registered under federal law to manufacture, distribute, dispense, or conduct research with controlled substances in the state may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by the person's registration and in conformity with the other provisions of this chapter.

(c) *[Repealed, Sec. 22 c: 146 SLA 1986].*

(d) *[Repealed, Sec. 22 ch 146 SLA 1986].*

(e) *[Repealed, Sec. 22 ch 146 SLA 1986].*

(f) A peace officer may enter a registrant's premises at reasonable times and in a reasonable manner to inspect the premises and records required to be maintained under federal law. An inspection may not extend to financial data, pricing data, or sales data, other than shipment data, unless the owner, operator, or agent in charge of the premises consents.

(g) Upon request from a peace officer, a person who manufactures, distributes, dispenses, or conducts research with a controlled substance in the state shall provide evidence of current registration under 21 U.S.C. 811 - 830 (Controlled Substances Act) and the regulations adopted under those sections.

Sec. 17.30.030. - 17.30.050. Registration; denial, revocation, and suspension of registration; order to show cause. [Repealed, Sec. 22 ch 146 SLA 1986].

Repealed or Renumbered

Sec. 17.30.060. Records of registrants.

A person registered under federal law to manufacture, distribute, dispense, or conduct research with controlled substances in the state shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law.

Sec. 17.30.070. Order forms; prescriptions.

(a) A controlled substance may be distributed by one registrant to another registrant only if the distribution is in accordance with federal requirements for order forms.

(b) A controlled substance may not be dispensed by a practitioner other than in accordance with federal requirements regarding prescriptions for controlled substances.

(c) If the classification of a controlled substance in a schedule set out in AS 11.71.140 - 11.71.190 is different from its corresponding classification under federal law, the requirements of (a) and (b) of this section are determined by the classification of the substance under federal law.

Sec. 17.30.080. Unlawful administration, prescription, and dispensation of controlled substances.

(a) A controlled substance classified under federal law or in a schedule set out in AS 11.71.140 - 11.71.190 may not be administered, prescribed, dispensed, or distributed other than for a medical purpose.

(b) A person who violates (a) of this section, or who otherwise manufactures, distributes, dispenses, or conducts research with a controlled substance in the state without fully complying with 21 U.S.C. 811 - 830 (Controlled Substances Act), and regulations adopted under those sections, is guilty of misconduct involving a controlled substance under AS 11.71.010 - 11.71.070 in the degree appropriate to the circumstances as described in those sections. Upon filing a complaint, information, presentment, or indictment charging a medical assistance provider with misconduct involving a controlled substance under AS 11.71.140 - 11.71.190, the attorney general shall, in writing, notify the commissioner of health and social services of the filing.

(c) Upon receiving a notice from the attorney general under (b) of this section, the commissioner of health and social services shall immediately undertake a review of all unpaid claims or requests for reimbursements attributable to services claimed to have been provided by the person charged.

(d) In this section,

(1) "claims" has the meaning given in AS 47.05.290;

(2) "medical assistance provider" has the meaning given in AS 47.05.290;

(3) "medical purpose" means a purpose that is solely medical as opposed to any other purpose, that is reasonably necessary for treatment of a person's illness, injury, or physical or mental health, and that is provided by a practitioner while acting within the usual course of professional practice or research and in accordance with a standard of care generally recognized and accepted within the medical profession in the United States;

(4) "practitioner" has the meaning given in AS 11.71.900.

Article 02. ENFORCEMENT AND FORFEITURE

Sec. 17.30.100. Powers of the department of public safety.

(a) The commissioner of public safety shall enforce this chapter and shall cooperate with other state and federal agencies in the discharge of their responsibilities pertaining to illicit traffic in controlled substances and in suppressing the abuse of controlled substances. Under this section, the powers of the commissioner of public safety include but are not limited to the following:

(1) arranging for the exchange of information among government officials concerning illicit traffic in and abuse of controlled substances;

(2) coordinating training programs pertaining to controlled substances at both local and state levels;

(3) cooperating with the Drug Enforcement Administration of the United States Department of Justice by establishing a centralized unit to accept, catalog, file, and collect statistics, including records of persons who have violated the provisions of this chapter or AS 11.71 in the state and making the information available for federal, state, and local law enforcement purposes; and

(4) instituting in the superior court, actions for injunctions against continued manufacture, distribution, dispensation, or research with a controlled substance in the

state by a person who violates 21 U.S.C. 811 - 830 (Controlled Substances Act) or the regulations adopted under those sections.

(b) The commissioner of public safety may not furnish the name or identity of a patient or research subject whose identity could not be obtained under AS 17.30.155.

(c) The Department of Public Safety, in accordance with AS 37.07 (the Executive Budget Act), may apply for and accept money necessary to exchange information concerning narcotics trafficking between the states, or otherwise related to the enforcement of AS 11.71 or AS 11.73.

(d) The Department of Public Safety or a local law enforcement agency may accept from the United States Attorney General property, including money, that is forfeited under 21 U.S.C. 881 (the Controlled Substances Act). The Department of Public Safety and local law enforcement agencies shall, in accordance with 21 U.S.C. 881 (e) and regulations and policies adopted under that section, use property and the proceeds of property obtained under this subsection in the enforcement of this chapter, AS 11.71, and municipal ordinances substantially similar to this chapter and AS 11.71.

Sec. 17.30.110. Items subject to forfeiture.

The following may be forfeited to the state:

(1) a controlled substance which has been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or AS 11.71;

(2) raw materials, products, and equipment which are used or intended for use in manufacturing, distributing, compounding, processing, delivering, importing, or exporting a controlled substance which is a felony under this chapter or AS 11.71;

(3) property which is used or intended for use as a container for property described in (1) or (2) of this section;

(4) a conveyance, including but not limited to aircraft, vehicles, or vessels, which has been used or is intended for use in transporting or in any manner in facilitating the transportation, sale, receipt, possession, or concealment of property described in (1) or (2) of this section in violation of a felony offense under this chapter or AS 11.71; however,

(A) a conveyance may not be forfeited under this paragraph if the owner of the conveyance establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the owner was neither a consenting party nor privy to the violation;

(B) a forfeiture of a conveyance encumbered by a valid security interest at the time of seizure is subject to the interest of the secured party if the secured party establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the secured party was neither a consenting party nor privy to the violation;

(5) books, records, and research products and materials, including formulas, microfilm, tapes, and data, which are used in violation of this chapter or AS 11.71;

(6) money, securities, negotiable instruments, or other things of value used in financial transactions derived from activity prohibited by this chapter or AS 11.71; and

(7) a firearm which is visible, carried during, or used in furtherance of a violation of this chapter or AS 11.71.

Sec. 17.30.112. Proceedings resulting in forfeiture.

(a) Property listed in AS 17.30.110 may be forfeited to the state either upon conviction of the defendant of a violation of this chapter or AS 11.71, or upon judgment of a court in a separate civil proceeding in rem. The court may order a forfeiture in the in rem proceeding if it finds that an item specified in AS 17.30.110 was used during or in aid of a violation of this chapter or AS 11.71.

(b) It is not a defense in an in rem proceeding brought under this section that a criminal proceeding has resulted in a conviction or conviction of a lesser offense for a violation of this chapter or AS 11.71.

(c) When forfeiting property under (a) of this section, a court may award to a municipal law enforcement agency that participated in the arrest or conviction of the defendant, the seizure of property, or the identification of property for seizure, (1) the property if the property is worth \$5,000 or less and is not money or some other thing that is divisible, or (2) up to 75 percent of the property or the value of the property if the property is worth more than \$5,000 or is money or some other thing that is divisible. In determining the percentage a municipal law enforcement agency may receive under this subsection, the court shall consider the municipal law enforcement agency's total involvement in the case relative to the involvement of the state.

Sec. 17.30.114. Seizure and custody of property.

(a) Property listed in AS 17.30.110 may be seized by a peace officer upon an order issued by a court having jurisdiction over the property upon a showing of probable cause that the property may be forfeited under AS 17.30.110. Seizure without a court order may be made if

- (1) the seizure is incident to a valid arrest or a search under a valid search warrant;
- (2) the property subject to seizure has been the subject of an earlier judgment in favor of the state in a criminal proceeding or civil proceeding in rem under this chapter or AS 11.71; or
- (3) there is probable cause that the property was used, is being used, or is intended for use, in violation of this chapter or AS 11.71 and the property is easily movable; property seized under this paragraph may not be held for more than 48 hours without a court order obtained to continue its detention.

(b) Property taken or detained under (a) of this section shall be held in the custody of either the commissioner of public safety or a municipal law enforcement agency authorized by the commissioner of public safety to retain custody of property listed in AS 17.30.110 subject only to the orders and decrees of the court having jurisdiction over any forfeiture proceedings. If property is seized under this chapter, the commissioner of public safety or an authorized municipal law enforcement agency may

- (1) place the property under seal;
- (2) remove the property to a place designated by the court;
- (3) take custody of the property and remove it to an appropriate location for disposition in accordance with law; or
- (4) with court approval, transfer the property to another state or federal law enforcement agency for forfeiture proceedings by that agency; the court having jurisdiction shall grant the approval under this paragraph if the property

(A) will be retained within the jurisdiction of the court by the agency to which the property is being transferred; or

(B) is

(i) not needed as evidence; or
(ii) needed as evidence, and the property is fungible or the property's evidentiary value can otherwise be preserved without retaining the property within the jurisdiction of the court.

(c) Within 10 days after a seizure under AS 17.30.110 - 17.30.126, the commissioner of public safety shall make an inventory of any property seized, including controlled substances, and shall appraise the value of any items seized other than controlled substances.

Sec. 17.30.116. Procedure for forfeiture action.

(a) Within 20 days after a seizure under AS 17.30.110 - 17.30.126, the commissioner of public safety shall, by certified mail, notify any person known to have an interest in an item with an appraised value of \$500 or more, or who is ascertainable from official registration numbers, licenses, or other state, federal, or municipal numbers on the item, of the pending forfeiture action. Additionally, the commissioner of public safety shall publish notice of forfeiture action of an item valued at \$500 or more in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the state and distributed in that judicial district. The notice shall be published once each week during four consecutive calendar weeks. The requirements of this subsection do not apply to the forfeiture of controlled substances which have been manufactured, distributed, dispensed, or possessed in violation of this chapter or AS 11.71, regardless of their value.

(b) Upon service or publication of notice of commencement of a forfeiture action under this section, a person claiming interest in the property shall file within 30 days after the service or publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid, and an answer to the state's allegations. If a claim and answer is not filed within the time specified, the property described in the state's allegation must be ordered forfeited to the state without further proceedings or showings.

(c) Questions of fact or law raised by a notice of forfeiture action and answer of a claimant in an action commenced under this section must be determined by the court sitting without a jury. This proceeding may be held in abeyance until conclusion of any pending criminal charges against the claimant under this chapter or AS 11.71.

Sec. 17.30.118. Petition for release of seized items.

(a) A claimant under AS 17.30.116 (b) may at any time petition for release of a seized item as follows:

- (1) to a court in which a warrant for seizure has been issued;
- (2) to a court in which a criminal or civil action alleging forfeiture of the item has been filed; or
- (3) before an action is filed, or if no seizure warrant was issued, to a court in the judicial district in which the violation took place.

(b) An item may not be released by the court under (a) of this section unless the claimant gives adequate assurance that the item will remain subject to the court's jurisdiction and

- (1) the court finds that the release is in the best interests of the state; or
- (2) the claimant provides a bond or other valid and equivalent security equal to twice the assessed value of the item.

Sec. 17.30.120. Petition for sale of seized item.

A claimant may petition the court for sale of an item before final disposition of court proceedings. The court shall grant a petition for sale upon a finding that the sale is in the best interests of the state and the preservation and maintenance of the item seized.

Proceeds from the sale plus interest to the date of final disposition of the court proceedings become the subject of the forfeiture action.

Sec. 17.30.122. State disposal of forfeited property.

Property forfeited under AS 17.30.110 - 17.30.126 other than controlled substances and firearms shall be disposed of by the commissioner of administration in accordance with applicable law. Firearms shall be disposed of as provided in AS 18.65.340. As to property other than firearms or controlled substances, the commissioner of administration may

- (1) destroy property harmful to the public;
- (2) sell the property and use the proceeds for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody, and court costs;
- (3) take custody of the property and authorize its use in the enforcement of this chapter or AS 11.71, or transfer it to another agency of the state or a political subdivision of the state for a use in furtherance of the administration of justice;
- (4) take custody of the property and remove it for disposition in accordance with law;
- (5) forward it to the Drug Enforcement Administration of the United States Department of Justice for disposition; or
- (6) transfer ownership of an aircraft to the Alaska Wing, Civil Air Patrol.

Sec. 17.30.124. Remittance to claimant.

(a) Upon a showing that a claimant is entitled to remittance under AS 17.30.110 - 17.30.126, the court shall order that

- (1) if the claimant is entitled to the item, it shall be delivered to the claimant immediately;
- (2) if the claimant is entitled to remittance of some value less than the total value of the item, the claimant is entitled, at the claimant's choice, to receive either the value of the claimant's interest or, upon receipt of payment of the difference in value by the claimant, the entire item.

(b) An offender who used an item subject to remission in violation of this chapter or AS 11.71 shall be assessed a fine which may not be less than the cost of any lien payment or remittance made by the state plus the reasonable costs of its seizure.

Sec. 17.30.126. Forfeiture of controlled substances.

(a) A controlled substance manufactured, possessed, transferred, sold, or offered for sale in violation of this chapter or AS 11.71 is contraband and must be seized and summarily forfeited to the state. The commissioner of public safety or the commissioner's designee, including a municipal law enforcement agency authorized under AS 17.30.114(b) to retain custody of controlled substances, is responsible for the disposal of controlled substances which have been forfeited. The controlled substances shall be disposed of in accordance with procedures and requirements prescribed by the commissioner.

(b) Plants from which controlled substances may be derived and which have been planted or cultivated in violation of this chapter or AS 11.71, or which are grown in the wild, may be seized and summarily forfeited to the state.

Sec. 17.30.130. Judicial review. [Repealed, Sec. 22 ch 146 SLA 1986].

Repealed or Renumbered

Article 03. EDUCATION AND RESEARCH

Sec. 17.30.140. Education and research.

(a) The commissioner of health and social services shall provide for educational programs designed to prevent and deter the abuse of controlled substances. In connection with these programs, the commissioner may

(1) assist the regulated industry and interested groups and organizations in contributing to the reduction of abuse of controlled substances;

(2) promote better recognition of the problems surrounding abuse of controlled substances within the regulated industry and among interested groups and organizations;

(3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) evaluate procedures, projects, and techniques conducted or proposed as part of educational programs on abuse of controlled substances;

(5) disseminate the results of research on abuse of controlled substances to promote a better public understanding of the problems which exist and their solutions; and

(6) with the cooperation of the Department of Law, assist in the education and training of state and local law enforcement officials in their efforts to prevent illicit traffic in and abuse of controlled substances.

(b) The commissioner of health and social services shall encourage research on controlled substances and may

(1) establish methods to assess the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake research to

(A) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this chapter;

(B) determine patterns of abuse of controlled substances and their social effects; and

(C) improve methods for preventing, predicting, and understanding the abuse of controlled substances;

(3) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for conducting research, demonstrations, or special projects which bear directly on abuse of controlled substances and for related research and educational activities.

Article 04. GENERAL PROVISIONS

Sec. 17.30.150. Reliance on Drug Enforcement Administration.

Results, information, and evidence received from the Drug Enforcement Administration of the United States Department of Justice relating to the enforcement functions of this chapter, including results of inspections conducted by it, may be relied on and acted on by the Department of Public Safety in the exercise of its enforcement functions under this chapter.

Sec. 17.30.155. Confidentiality of certain information.

A practitioner engaged in medical practice or research may not disclose the name or identity of a patient or research subject that the practitioner is required to keep confidential unless ordered by a court to disclose it within the context of a criminal investigation or proceeding.

Sec. 17.30.900. Definitions.

(a) Unless the context clearly requires otherwise, the definitions set out in AS 11.71.900 apply to this chapter.

(b) *[Repealed, Sec. 22 ch 146 SLA 1986].*