

HB

149

SENATE COMMITTEE REPORT

DATE: 4/14/05

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered CS FOR HOUSE BILL NO. 149(FIN) am

HB 149 CONTROLLED SUBSTANCES

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

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
SCS House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

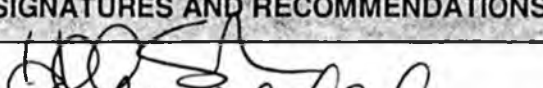

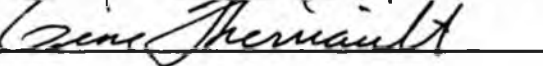
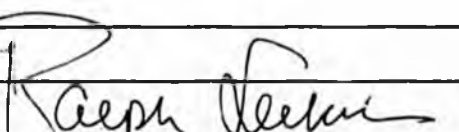
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
			X	
	X			
	X			
CHAIR: 	✓			

ALASKA STATE SENATE



Session

(907)-465-2327
FAX# (907)-465-5241
State Capitol
Room 125

Interim Address:
119 N. Cushman, Suite 211
Fairbanks, AK 99701
(907)-456-5081
Fax# (907)-456-8245

SENATE JUDICIARY COMMITTEE Senator Ralph Seekins, Chairman

Letter of Intent SCSCSHB 149(JUD)

May 3, 2005

It is the intent of the Senate in enacting this measure that release before conviction be limited for makers of methamphetamine whose prior conviction put them on notice of the danger of the chemicals involving in its manufacture and the destructive nature of its effect on users. The danger that the defendant poses to the community is one of the factors that the court must consider under AS 12.30.020 for release on bail, and in the case of manufacturing methamphetamine that factor should be the paramount consideration in setting bail. The Senate finds and determines that the illegal manufacturing of methamphetamine of the type that is generally encountered in Alaska subjects anyone within a wide area to the risk of fire, explosion, and toxic chemicals in gaseous, liquid, and solid form. The process of manufacturing methamphetamine presents such a high level of danger to the community, law enforcement, other first responders, and to environmental personnel, that a mandatory minimum cash bail as set out in this bill is necessitated for defendants previously convicted of manufacturing, delivering or possessing methamphetamine.

Brian Hove

From: Wayne Leighty
Sent: Thursday, April 28, 2005 3:40 PM
To: Brian Hove
Cc: Sen. Gretchen Guess
Subject: Safeway on Meth for 6pm tonight
Importance: High

Brian,

I spoke with Glenn Peterson and Shari Meyers with Safeway regarding the meth bill. Here's a synopsis of their position as I understand it... and a question for you.

They are fine with all provisions of the bill except the log. In fact, they are already keeping products behind the counter, limiting purchase amounts, requiring ID to purchase, and even limiting purchase to those 18 yr. or older. They would prefer to do away with the log provision altogether. If it stays, they would prefer to send their log to DPS weekly so they don't have to keep it on premisis and would prefer to have DPS provide the log and cover the costs of sending it each week. They also offered to participate in whatever "meth task force" Alaska may create and offered to run some kind of test program with the logs in several of their stores to see if it does produce benefits.

They can testify tonight at 6pm but it will conflict with some other commitments. I told them I would ask you whether the committee would like to hear testimony from them tonight and whether we can give a rough estimate of the time for their testimony.

Thanks for your help!

Wayne Leighty
Staff for Senator Guess
Alaska State Legislature
www.GretchenGuess.com

24-LS0596\K

Luckhaupt

4/28/05

SENATE CS FOR CS FOR HOUSE BILL NO. 149(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:

Referred:

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

A BILL**FOR AN ACT ENTITLED**

1 "An Act relating to controlled substances regarding the crimes of manslaughter and
2 misconduct involving a controlled substance; relating to the manufacture of
3 methamphetamine and to the sale, possession, and delivery of certain substances and
4 precursors used in the manufacture of methamphetamine; relating to listing certain
5 anabolic steroids as controlled substances; relating to the listing of property that
6 constitutes an illegal drug manufacturing site; amending Rule 41, Alaska Rules of
7 Criminal Procedure; and providing for an effective date."

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

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

11 FINDINGS. The legislature finds that the illegal manufacturing of methamphetamine
12 of the type that is generally encountered in Alaska subjects anyone within a wide area to the
13 risk of fire, explosion, and toxic chemicals in gaseous, liquid, and solid form. This activity

1 presents such a high level of danger to the community and to law enforcement and
2 environmental personnel that the mandatory minimum cash bail required by sec. 8 of this Act
3 is justified for defendants described in that section.

4 * Sec. 2. AS 11.41.120(a) is amended to read:

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

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

8 [OR]

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

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

16 * Sec. 3. AS 11.71.020(a) is amended to read:

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

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

22 (2) manufactures any material, compound, mixture, or preparation that
23 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 isomers;

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

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

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

4 or

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

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

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

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

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

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

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

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

26 * Sec. 4. AS 11.71.020 is amended by adding a new subsection to read:

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

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

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

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

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

10 (i) retailer or as a wholesaler;

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

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

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

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

17 (2) less than 24 grams of ephedrine, pseudoephedrine,
18 phenylpropanolamine, or the salts, isomers, or salts of isomers of those chemicals in a
19 home or business establishment under circumstances that are consistent with typical
20 medicinal or household use, as indicated by factors that include storage location,
21 purchase date, possession of the products in a variety of strengths, brands, types,
22 purposes, and expiration dates; the exception provided in this paragraph does not
23 apply if the substances in excess of nine grams were all purchased within a period of
24 thirty consecutive days unless purchased by a legitimate business for use in the
25 ordinary course of the business.

26 * Sec. 5. AS 11.71.030(a) is amended to read:

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

29 (1) under circumstances not proscribed under AS 11.71.020(a)(2) - (6)
30 [AS 11.71.020(a)(2) - (4)], manufactures or delivers any amount of a schedule IIA or
31 IIIA controlled substance or possesses any amount of a schedule IIA or IIIA controlled

1 substance with intent to manufacture or deliver;

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

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

6 (A) with reckless disregard that the possession occurs

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

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

9 or

10 (B) on a school bus.

11 * Sec. 6. AS 11.71.180 is amended by adding a new subsection to read:

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

25 (1) boldenone;

26 (2) chlorotestosterone (4-chlorotestosterone);

27 (3) clostebol;

28 (4) dehydrochlormethyltestosterone;

29 (5) dihydrotestosterone (4-dihydrotestosterone);

30 (6) drostanolone;

31 (7) ethylestrenol;

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

21 * Sec. 7. AS 11.71 is amended by adding a new section to article 2 to read:

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

- 27 (1) ephedrine under AS 11.71.200(4);
- 28 (2) pseudoephedrine under AS 11.71.200(13);
- 29 (3) phenylpropanolamine under AS 11.71.200(11).

30 (b) This section does not apply to a person who lawfully purchases or receives
31 more than nine grams of a listed chemical identified in (a) of this section

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

4 (A) retailer or as a wholesaler;

5 (B) wholesale drug distributor licensed by the Board of
 6 Pharmacy;

7 (C) manufacturer of drug products licensed by the Board of
 8 Pharmacy;

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

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

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

13 * Sec. 8. AS 12.30.023 is amended by adding a new subsection to read:

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

22 * Sec. 9. AS 12.55.125(c), as amended by ch. 2, sec. 8, SLA 2005, is amended to read:

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

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

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

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

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

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

8 if

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

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

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

19 (4) if the offense is a third felony conviction and the defendant is not
20 subject to sentencing under (1) of this section, 15 to 20 years.

21 * Sec. 10. AS 12.55.125(d), as amended by ch. 2, sec. 9, SLA 2005, is amended to read:

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

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

1 factor under AS 12.55.155 applies;

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

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

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

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

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

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

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

19 * Sec. 11. AS 12.55.185 is amended by adding a new paragraph to read:

20 (1) "building," in addition to its usual meaning, includes any propelled
21 vehicle or structure adopted for overnight accommodation of persons or for carrying
22 on business; when a building consists of separate units, including apartment units,
23 offices, or rented rooms, each unit is considered a part of the same building.

24 * Sec. 12. AS 17.30 is amended by adding a new section to article 1 to read:

25 **Sec. 17.30.090. Dispensation of and registration and record requirements**
26 **for certain listed chemicals.** (a) A wholesaler, manufacturer, or distributor of
27 products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their
28 salts, isomers, or salts of isomers, or iodine or crystal iodine, shall keep complete
29 records of all transactions involving those products, including the names of all parties
30 involved in the transaction, the date of the transaction, and the amount of the drug
31 products involved. The records shall be kept readily retrievable for inspection by law

1 enforcement officers and separate from all other invoices or records of transactions not
 2 involving those products and shall be maintained for one year, or a period of time
 3 established by the Department of Public Safety by regulation, and must allow for
 4 inspection of the records by law enforcement officers.

5 (b) A retailer of a product or substance that contains (1) as the sole active
 6 ingredient ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers,
 7 or salts of isomers, (2) iodine, or crystal iodine, ~~or~~ (3) ~~any other ingredient~~ when
 8 required by the Department of Public Safety by regulation, may not sell or dispense
 9 the product or substance unless the retailer confirms the identity of the purchaser by
 10 valid government-issued photo identification and the retailer requires the purchaser to
 11 sign a written log completed by the retailer listing information required by the
 12 Department of Public Safety by regulation. The Department of Public Safety and
 13 other law enforcement officers shall have access to the log. The log and the
 14 information entered into the log is confidential. The retailer may not allow access to
 15 the log or release information contained within the log except to the Department of
 16 Public Safety or other law enforcement officers.

17 (c) A person may not offer to sell a product or substance that contains (1) as
 18 the sole active ingredient ephedrine, pseudoephedrine, or phenylpropanolamine, or
 19 their salt, isomers, or salts of isomers, (2) iodine, or crystal iodine, or (3) any
 20 ~~additional~~ ^{other ingredient} product when required by the Department of Public Safety by regulation
 21 unless that product or substance is displayed behind a service counter and not
 22 accessible to the public or is kept in a secured cabinet or storage area that may only be
 23 accessed by the seller.

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

27 (e) Notwithstanding (a) of this section, if a municipality enacts an ordinance
 28 requiring wholesalers, manufacturers, and distributors to report the information
 29 maintained under (a) of this section, each wholesaler, manufacturer, and distributor
 30 shall regularly report that information to the municipal police department at intervals
 31 required in the ordinance.

#12
 open
 product
 or
 substance

#13

1 (f) Upon the written request of any law enforcement agency, any wholesaler,
2 manufacturer, distributor, or a retailer shall report electronically or by mail the
3 information collected in (a) or (b) of this section for the subsequent six month period.

4 (g) A person has a duty to exercise that degree of care that a reasonable person
5 would observe to ensure that the requirements of (b) and (c) of this section are
6 complied with. This duty of the person includes ensuring the compliance by agents or
7 employees with this section, including acting with reasonable diligence to determine
8 that agents or employees are advised of the provisions of this section, either by
9 securing the agent's or employee's written acknowledgment of posted instructions or
10 otherwise. A person may neither knowingly allow agents or employees to violate this
11 section nor recklessly or with criminal negligence fail to act in accordance with the
12 duty prescribed under this subsection with the result that an agent or employee of the
13 licensee violates a provision of this section.

14 (h) It is an affirmative defense to a prosecution of a person that the person
15 exercised that degree of care specified in (g) of this section and did not knowingly
16 allow a violation of this section or recklessly or with criminal negligence fail to act as
17 required by this section.

18 (i) A person who knowingly violates (a), (b), or (c) of this section is guilty of a
19 class A misdemeanor, punishable upon conviction only by a fine in an amount not to
20 exceed \$10,000. A wholesaler, manufacturer, or distributor that knowingly fails to
21 report as required by (e) of this section is guilty of a violation.

22 (j) In this section,

23 (1) "criminal negligence" has the meaning given in AS 11.81.900(a);

24 (2) "distributor" means a person in the state or another state, other than
25 a manufacturer or wholesaler, who sells, delivers, transfers, or in any manner furnishes
26 a drug product described in (a) of this section to a person who is not the ultimate user
27 or consumer of the product;

28 (3) "knowingly" has the meaning given in AS 11.81.900(a);

29 (4) "manufacturer" means a person in the state who produces,
30 compounds, packages, or in any manner initially prepares for sale or use a drug
31 product described in (a) of this section, or a person in another state if the person causes

1 the products to be compounded in, packaged in, or transported to this state;

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

6 (6) "recklessly" has the meaning given in AS 11.81.900(a);

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

11 * Sec. 13. AS 46.03.500 is amended by adding a new subsection to read.

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

16 * Sec. 14. AS 46.03.550(b) is amended to read:

17 (b) The department shall maintain a list of properties for which the department
18 has received notice under AS 46.03.500(c). When the department determines under (a)
19 of this section that a property on the list is fit for use, the department shall note on the
20 list maintained on its Internet website under AS 46.03.500(f), and on any other
21 list or database it maintains related to illegal drug manufacturing sites, that the
22 property is fit for use [REMOVE THE PROPERTY FROM THE LIST] and shall
23 notify the owner of the property that the property is fit for use. The property shall
24 remain on the lists or databases for five years after it is determined that the
25 property is fit for use and shall be removed from the lists or databases within
26 three months after the five year period has elapsed. On request, the department
27 shall give a copy of the list maintained under this section to any person who requests
28 the list.

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

31 INDIRECT COURT RULE AMENDMENT. Section 8 of this Act has the effect of

1 amending Rule 41, Alaska Rules of Criminal Procedure, by limiting the type and amount of
2 bond that can be posted to secure the pretrial release of certain defendants charged with
3 manufacturing methamphetamine under AS 11.71.020(a)(2).

4 * Sec. 16. The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 APPLICABILITY. Sections 2 - 12 and 15 of this Act apply to offenses committed on
7 or after the effective date of this Act.

8 * Sec. 17. AS 17.30.090 is repealed.

9 * Sec. 18. Sections 1 - 16 of this Act take effect July 1, 2005.

10 * Sec. 19. Section 17 of this Act takes effect June 30, 2007.

AMENDMENT

#1

Adopted

OFFERED IN THE SENATE

TO: SCS CSHB 149(JUD), Draft Version "K"

1 Page 10, lines 13 - 16:

2 Delete "The log and the information entered into the log is confidential. The retailer
3 may not allow access to the log or release information contained within the log except to the
4 Department of Public Safety or other law enforcement officers."

5

6 Page 11, following line 3:

7 Insert a new subsection to read:

8 (g) The log required to be maintained by a retailer under (b) of this section and
9 the information entered into the log is confidential. The retailer may not allow access
10 to the log or release information contained within the log except to the Department of
11 Public Safety or other law enforcement officers."

12

13 Reletter the following subsections accordingly.

14

15 Page 11, line 15:

16 Delete "(g)"

17 Insert "(h)"

18

19 Page 11, line 21, following "violation.":

20 Insert "A retailer who knowingly violates (g) of this section is guilty of a violation."

AMENDMENT

#2

OFFERED IN THE SENATE

TO: SCS CSHB 149(JUD), Draft Version "K"

- 1 Page 11, line 3:
- 2 Delete "subsequent"
- 3 Following "period":
- 4 Insert "following the written request"

AMENDMENT

#3

OFFERED IN THE SENATE

TO: SCS CSHB 149(JUD), Draft Version "K"

- 1 Page 10, line 20, following "regulation":
- 2 Insert "due to the product's potential for diversion to the manufacture of
- 3 methamphetamine, its immediate precursors, or the salts, isomers, or salts of isomers of
- 4 methamphetamine or its immediate precursors"

AMENDMENT #4

OFFERED IN THE SENATE

TO: SCS CSHB 149(JUD), Draft Version "K"

1 Page 4, lines 17 - 25:

2 Delete all material and insert:

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

AMENDMENT #5

OFFERED IN THE SENATE

TO: SCS CSHB 149(JUD) Draft Version "K"

1 Page 10, line 8, following "regulation":

2 Insert "due to the product's potential for diversion to the manufacture of
3 methamphetamine, its immediate precursors, or the salts, isomers, or salts of isomers of
4 methamphetamine or its immediate precursors"

AMENDMENT #6

OFFERED IN THE SENATE

TO: SCS CSHB 149(JUD), Draft Version "K"

1 Page 1, line 9, through page 2, line 3:

2 Delete all material.

3

4 Page 2, line 4:

5 Delete "Sec. 2"

6 Insert "Section 1"

7

8 Renumber the following bill sections accordingly.

9

10 Page 12, line 31:

11 Delete "Section 8"

12 Insert "Section 7"

13

14 Page 13, line 6:

15 Delete "Sections 2 - 12 and 15:"

16 Insert "Sections 1 - 11 and 14"

17

18 Page 13, line 9:

19 Delete "Sections 1 - 16"

20 Insert "Sections 1 - 15"

21

22 Page 13, line 10:

23 Delete "Section 17"

1

Insert "Section 16"

AMENDMENT #7

OFFERED IN THE SENATE

TO: SCS CSHB 149(JUD), Draft Version "K"

- 1 Page 13, line 8
- 2 Delete "AS 17.30.090"
- 3 Insert "AS 17.30.090~~(a)~~" (b)

AMENDMENT

#8

OFFERED IN THE SENATE

TO: SCS CSHB 149(JUD), Draft Version "K"

- 1 Page 10, lines 10 - 11:
- 2 Delete "requires the purchaser to sign a written log completed by the retailer"
- 3 Insert "completes a written log"

AMENDMENT

#9

OFFERED IN THE SENATE

TO: SCS CSHB 149(JUD), Draft Version "K"

- 1 Page 10, line 2, following "or a":
- 2 Insert "shorter"

AMENDMENT

#10

OFFERED IN THE SENATE

TO: SCS CSHB 149(JUD), Draft Version "K"

- 1 Page 10, line 12, following "regulation.":
- 2 Insert "The log shall be maintained for one year or a shorter period of time established
- 3 by the Department of Public Safety by regulation."

AMENDMENT #11

OFFERED IN THE HOUSE

TO: SCS CSHB 149(JUD), Draft Version "K"

1 Page 10, line 16, following "officers":

2 Insert "A retailer is not liable in a civil action for release of information contained in
3 the log in violation of the confidentiality requirements of this section unless the retailer
4 intentionally released the information or was aware at the time of the release that the
5 information was being released in violation of this section."



6401 A Street • Anchorage, Alaska 99518

April 26, 2005

Re:
Rep. Ramras
bill

VIA FACSIMILE AND EMAIL

Senator Ralph Seekins
Chair, Senate Judiciary Committee
State Capitol Room 125
Juneau, Alaska 99801-1182

Re: Safeway's Comments on HB 149 and SB 106

Dear Senator Seekins:

I write to respectfully offer you and your Committee the following comments of Safeway Inc. on HB 149 and SB 106, the two bills imposing certain restrictions on retailers regarding the sale of methamphetamines and precursors, currently pending before your Committee. While Safeway generally supports the law enforcement goals of these bills, Safeway nevertheless has serious concerns about the impact that these bills could have upon retailers such as Safeway.

By way of information, Safeway sells both prescription and non-prescription pharmaceutical drugs to its customers from 25 store locations throughout the State of Alaska. As one of the State's largest retail sellers of such drugs, these bills could have a significant, adverse impact on Safeway's operations, costs of doing business and customer relations.

More specifically, we offer the following comments regarding aspects of HB 149:

Section 9 (AS 11.71.210(a)): This provision makes it a crime for a person to purchase more than 9 grams of the listed substances within 30 days. It is unclear whether the provision contemplates that retailers would be responsible for policing and enforcing this provision themselves. If so, such effort would impose substantial additional labor expense on retailers, and could expose retailers to criminal penalties for failing to do so. We recommend that the provision be modified to clarify that retailers have no obligation to police or enforce this provision, and that any failure to do so would not subject retailers to criminal penalties.

Section 11 (AS 17.30.090(b)): The recordkeeping obligations set forth in this provision will be extremely burdensome on retailers, requiring more staff and man-hours to record and maintain the information specified herein (which includes keeping a log showing the date of the

Senator Ralph Seekins

April 26, 2005

Page 2

transaction, name of purchaser, type of ID and ID number and amount dispensed, for each transaction)). Safeway would be charged with tracking this information throughout Alaska and our 25 locations. Doing so will be highly labor-intensive and expensive. We recommend that these recordkeeping requirements be streamlined and that the bill be modified to clarify that any violations of this duty will not subject retailers to criminal penalties.

(AS 17.30.090(f)): This provision requires retailers to provide the information collected to any law enforcement agency, upon written request. We are concerned that disclosure of transaction records and customer information to law enforcement personnel may give rise to privacy issues with law-abiding customers. The bill provides no civil liability protection to retailers for complaints or claims brought by customers arising from the reporting of this information.

(AS 17.30.1090(b)): This provision makes violation of the above-mentioned recordkeeping duties a Class A Misdemeanor punishable by fines up to \$10,000. While the provision requires the failure to report information must be "knowingly" made in order to subject a wholesaler manufacturer or distributor to be guilty of a misdemeanor, it is silent with regard to retailers. The bill would thus seem to subject retailers (and possibly their employees) to Class A Misdemeanor charges and \$10,000 fines for inadvertent violations of the recordkeeping and secure storage duties. This section should either expressly exclude retailers (and their employees) from such penalties, or at a minimum, make clear that only intentional violations of such duties would subject retailers to such criminal charges and fines.

With respect to SB 106, we offer the following comments:

Section 4 (AS 11.71.210(a)): With respect to this provision, we incorporate by reference our comments made in regard to Section 9 of HB 149, and request that the provision be modified to clarify that retailers have no duty to police and enforce this provision themselves, and that failure to do so would not subject them to criminal penalties.

Section 5 (AS 11.17.090(b)): This provision imposes recordkeeping requirements on a "dispenser" of drugs listed in the bill. It is unclear whether "dispenser" is intended to include and apply to retailers. We incorporate by reference our comments regarding Section 11 of HB 149, pertaining to the substantial additional expense which will be imposed on retailers, and regarding the possibility that inadvertent violations of this provision by retailers (or their employees) could expose them to criminal charges and fines. We recommend that such provision be modified to clarify that it does not apply to retailers. If it is intended to apply to retailers, we recommend that it be modified streamline such recordkeeping and reporting requirements, and clarify that inadvertent failures to do so would not subject retailers to criminal penalties.

Senator Ralph Scekins
April 26, 2005
Page 3

We also incorporate by reference our comments regarding HB 149 regarding our concerns about privacy issues that law-abiding customers may have, and the need for civil liability protection for retailers from possible claims by customers for privacy violations.

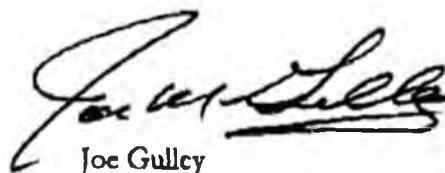
Finally, we incorporate by reference our comments regarding Section 11 of HB 149, regarding the general criminal penalty provisions of this bill, and recommend that the section be modified to clarify that retailers (and their employees) be expressly exempted from such provision, or at a minimum, that violations of such recordkeeping duties must be intentionally made to expose retailers (or their employees) to criminal penalties.

We appreciate the attention which you and the Committee members will give to Safeway's comments. We would be happy to discuss these concerns further with you and the Committee and/or provide an appropriate witness to testify to these concerns. Please feel free to contact us should you wish further comments from Safeway regarding these bills.

Very truly yours,
Safeway Inc.



Glenn Peterson
District Manager - Anchorage District



Joe Gulley
District Manager-Denali District

GP/ncb

42418v1

AMENDMENT #2

OFFERED IN THE SENATE

TO: SCS CSHB 149(), Draft Version "M"

1 Page 9, line 29:

2 Delete the second occurrence of "or"

3

4 Page 9, line 29, following "crystal iodine":

5 Insert ", or (3) any other ingredient when required by the Department of Public Safety

6 by regulation."

AMENDMENT #3

OFFERED IN THE HOUSE

TO: SCS CSHB 149(), Draft Version "M"

1 Page 12, line 4:

2 Delete "and"

3

4 Page 12, line 5, following "address":

5 Insert ", and owner's name at the time the notice was issued"

6

7 Page 12, line 13, following "use.":

8 Insert "The property shall remain on the lists or databases for five years after it is
9 determined that the property is fit for use and shall be removed from the lists or databases
10 within three months after the five year period has elapsed."

21-LS0596M
Luckhaupt
4/27/05

SENATE CS FOR 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, Kelly, Foster, Holm, Stoltze,
Gara, Elkins, Crawford, Meyer, Dahlstrom, Croft

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to controlled substances regarding the crimes of manslaughter and
2 misconduct involving a controlled substance; relating to the manufacture of
3 methamphetamine and to the sale, possession, and delivery of certain substances and
4 precursors used in the manufacture of methamphetamine; relating to listing certain
5 anabolic steroids as controlled substances; relating to the listing of property that
6 constitutes an illegal drug manufacturing site; amending Rule 41, Alaska Rules of
7 Criminal Procedure; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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

11 FINDINGS. The legislature finds that the illegal manufacturing of methamphetamine
12 of the type that is generally encountered in Alaska subjects anyone within a wide area to the
13 risk of fire, explosion, and toxic chemicals in gaseous, liquid, and solid form. This activity

1 presents such a high level of danger to the community and to law enforcement and
2 environmental personnel that the mandatory minimum cash bail required by sec. 8 of this Act
3 is justified for defendants described in that section.

4 * Sec. 2. AS 11.41.120(a) is amended to read:

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

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

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

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

16 * Sec. 3. AS 11.71.020(a) is amended to read:

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

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

22 (2) manufactures any material, compound, mixture, or preparation that
23 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 isomers;

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

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

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

4 or

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

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

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

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

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

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

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

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

26 * Sec. 4. AS 11.71.020 is amended by adding a new subsection to read:

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

1 methamphetamine, its immediate precursors, or the salts, isomers, or salts of isomers
2 of methamphetamine or its immediate precursors. The prima facie evidence described
3 in this subsection does not apply to a person who possesses the listed chemicals
4 ephedrine, pseudoephedrine, phenylpropanolamine, or the salts, isomers, or salts of
5 isomers of those chemicals

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

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

10 (A) retailer or as a wholesaler;

11 (B) wholesale drug distributor licensed by the Board of
12 Pharmacy;

13 (C) manufacturer of drug products licensed by the Board of
14 Pharmacy;

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

16 (E) health care professional licensed by the state.

17 * Sec. 5. AS 11.71.030(a) is amended to read:

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

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

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

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

28 (A) with reckless disregard that the possession occurs

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

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

31 or

1 (B) on a school bus.

2 * Sec. 6. AS 11.71.180 is amended by adding a new subsection to read:

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

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

- 1 (17) mibolone;
- 2 (18) nandrolone;
- 3 (19) norethandrolone;
- 4 (20) oxandrolone;
- 5 (21) oxymesterone;
- 6 (22) oxymetholone;
- 7 (23) stanolone;
- 8 (24) stanozolol;
- 9 (25) testolactone;
- 10 (26) testosterone;
- 11 (27) trenbolone.

* Sec. 7. 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

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

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

4 * Sec. 8. AS 12.30.023 is amended by adding a new subsection to read:

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

13 * Sec. 9. AS 12.55.125(c), as amended by ch. 2, sec. 8, SLA 2005, is amended to read:

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

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

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

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

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

31 (i) the manufacturing occurred in a building with

1 reckless disregard that the building was used as a permanent or
2 temporary home or place of lodging for one or more children
3 under 18 years of age or the building was a place frequented by
4 children; or

5 (ii) in the course of manufacturing or in preparation
6 for manufacturing, the defendant obtained the assistance of one or
7 more children under 18 years of age or one or more children were
8 present;

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

10 (4) if the offense is a third felony conviction and the defendant is not
11 subject to sentencing under (1) of this section, 15 to 20 years.

12 * Sec. 10. AS 12.55.125(d), as amended by ch. 2, sec. 9, SLA 2005, is amended to read:

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

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

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

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

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

30 (i) the attempted manufacturing occurred, or the
31 solicited or conspired offense was to have occurred, in a building

1 with reckless disregard that the building was used as a permanent
2 or temporary home or place of lodging for one or more children
3 under 18 years of age or the building was a place frequented by
4 children; or

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

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

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

10 * Sec. 11. AS 12.55.185 is amended by adding a new paragraph to read:

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

15 * Sec. 12. AS 17.30 is amended by adding a new section to article 1 to read:

16 **Sec. 17.30.090. Dispensation of and registration and record requirements**
17 **for certain listed chemicals.** (a) A wholesaler, manufacturer, or distributor of
18 products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their
19 salts, isomers, or salts of isomers, or iodine or crystal iodine, shall keep complete
20 records of all transactions involving those products, including the names of all parties
21 involved in the transaction, the date of the transaction, and the amount of the drug
22 products involved. The records shall be kept readily retrievable for inspection by law
23 enforcement officers and separate from all other invoices or records of transactions not
24 involving those products and shall be maintained for one year, or a period of time
25 established by the Department of Public Safety by regulation, and must allow for
26 inspection of the records by law enforcement officers.

27 (b) A retailer of a product or substance that contains (1) as the sole active
28 ingredient ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers,
29 or salts of isomers, or (2) iodine, or crystal iodine may not sell or dispense the product
30 or substance unless the retailer confirms the identity of the purchaser by valid
31 government-issued photo identification, and the retailer requires the purchaser to sign a

1 written log completed by the retailer listing information required by the Department of
2 Public Safety by regulation. The Department of Public Safety and other law
3 enforcement officers shall have access to the log. The log and the information entered
4 into the log is confidential. The retailer may not allow access to the log or release
5 information contained within the log except to the Department of Public Safety or
6 other law enforcement officers.

7 (c) A person may not offer to sell a product or substance that contains (1) as
8 the sole active ingredient ephedrine, pseudoephedrine, or phenylpropanolamine, or
9 their salts, isomers, or salts of isomers, (2) iodine, or crystal iodine, or (3) any
10 additional product when required by the Department of Public Safety by regulation
11 unless that product or substance is displayed behind a service counter and not
12 accessible to the public or is kept in a secured cabinet or storage area that may only be
13 accessed by the seller.

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

17 (e) Notwithstanding (a) of this section, if a municipality enacts an ordinance
18 requiring wholesalers, manufacturers, and distributors to report the information
19 maintained under (a) of this section, each wholesaler, manufacturer, and distributor
20 shall regularly report that information to the municipal police department at intervals
21 required in the ordinance.

22 (f) Upon the written request of any law enforcement agency, ~~any wholesaler,~~
23 manufacturer, distributor, or a retailer shall report electronically or by mail the
24 information collected in (a) or (b) of this section for the subsequent six month period.

25 (g) A person has a duty to exercise that degree of care that a reasonable person
26 would observe to ensure that the requirements of (b) and (c) of this section are
27 complied with. This duty of the person includes ensuring the compliance by agents or
28 employees with this section, including acting with reasonable diligence to determine
29 that agents or employees are advised of the provisions of this section, either by
30 securing the agent's or employee's written acknowledgment of posted instructions or
31 otherwise. A person may neither knowingly allow agents or employees to violate this

1 section nor recklessly or with criminal negligence fail to act in accordance with the
2 duty prescribed under this subsection with the result that an agent or employee of the
3 licensee violates a provision of this section.

4 (h) It is an affirmative defense to a prosecution of a person that the person
5 exercised that degree of care specified in (g) of this section and did not knowingly
6 allow a violation of this section or recklessly or with criminal negligence fail to act as
7 required by this section.

8 (i) A person who knowingly violates (a), (b), or (c) of this section is guilty of a
9 class A misdemeanor, punishable upon conviction only by a fine in an amount not to
10 exceed \$10,000. A wholesaler, manufacturer, or distributor that knowingly fails to
11 report as required by (e) of this section is guilty of a violation.

12 (j) In this section,

13 (1) "criminal negligence" has the meaning given in AS 11.81.900(a);

14 (2) "distributor" means a person in the state or another state, other than
15 a manufacturer or wholesaler, who sells, delivers, transfers, or in any manner furnishes
16 a drug product described in (a) of this section to a person who is not the ultimate user
17 or consumer of the product;

18 (3) "knowingly" has the meaning given in AS 11.81.900(a);

19 (4) "manufacturer" means a person in the state who produces,
20 compounds, packages, or in any manner initially prepares for sale or use a drug
21 product described in (a) of this section, or a person in another state if the person causes
22 the products to be compounded in, packaged in, or transported to this state;

23 (5) "readily retrievable" means available for inspection without prior
24 notice at the registration address if that address is in the state; if the registration
25 address is outside the state, "readily retrievable" means records must be furnished
26 within three working days by courier, facsimile, mail, or electronic mail;

27 (6) "recklessly" has the meaning given in AS 11.81.900(a);

28 (7) "wholesaler" means a person in the state or another state, other than
29 a manufacturer, who sells, transfers, or in any manner furnishes a drug product
30 described in (a) of this section to another person in the state for the purpose of the drug
31 product's being resold.

1 * Sec. 13. AS 46.03.500 is amended by adding a new subsection to read:

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

6 * Sec. 14. AS 46.03.550(b) is amended to read:

7 (b) The department shall maintain a list of properties for which the department
8 has received notice under AS 46.03.500(c). When the department determines under (a)
9 of this section that a property on the list is fit for use, the department shall note on the
10 list maintained on its Internet website under AS 46.03.500(f), and on any other
11 list or database it maintains related to illegal drug manufacturing sites, that the
12 property is fit for use [REMOVE THE PROPERTY FROM THE LIST] and shall
13 notify the owner of the property that the property is fit for use. On request, the
14 department shall give a copy of the list maintained under this section to any person
15 who requests the list.

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

18 INDIRECT COURT RULE AMENDMENT. Section 8 of this Act has the effect of
19 amending Rule 41, Alaska Rules of Criminal Procedure, by limiting the type and amount of
20 bond that can be posted to secure the pretrial release of certain defendants charged with
21 manufacturing methamphetamine under AS 11.71.020(a)(2).

22 * Sec. 16. The uncodified law of the State of Alaska is amended by adding a new section to
23 read:

24 APPLICABILITY. Sections 2 - 12 and 15 of this Act apply to offenses committed on
25 or after the effective date of this Act.

26 * Sec. 17. This Act takes effect July 1, 2005.

24-LS0954VA
Luckhaupt
4/22/05

SENATE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Introduced:
Referred:

A RESOLUTION

1 **Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State**
2 **Legislature, concerning House Bill No. 149, relating to controlled substances.**

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

4 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of
5 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding
6 changes to the title of a bill, are suspended in consideration of House Bill No. 149, relating to
7 controlled substances.

Representative Jay Ramras
Co-Chair, House Resources
V-Chair, Economic Develop.

Tourism & Trade

House State Affairs

119 N. Cushman St. Suite 207

Fairbanks, Alaska 99701

Phone: (907) 452-1088

Fax: (907) 452-1146

Alaska State Legislature



While in Session
State Capitol, Room 104
Juneau, Alaska 99801-1182
(907) 465- 3004
Fax: 465-2070
Toll Free: (877) 465-3004

House District 10

House of Representatives Sectional Summary Senate CS for CS for House Bill No. 149 Work Order 24-LS0596\M

“An Act relating to controlled substances regarding the crimes of manslaughter and misconduct involving a controlled substance; relating to the manufacture of methamphetamine and to the sale, possession, and delivery of certain substances and precursors used in the manufacture of methamphetamine; relating to listing certain anabolic steroids as controlled substances; relating to the listing of property that constitutes an illegal drug manufacturing site; amending Rule 41, Alaska Rules of Criminal Procedure; and providing for an effective date.”

Section 1. The uncodified law of the State of Alaska is amended to find that the illegal manufacture of methamphetamine subjects the public to the risk of fires, explosions, and toxic chemicals, as well as presenting a high level of danger to the community and to emergency responders which, justifies the requirement of the mandatory minimum cash bail required in sec. 8 of this Act. (SB70, Sec.1)

Section 2. Makes it a crime of manslaughter if a person intentionally, knowingly, or recklessly manufactures or delivers a controlled substance in violation of AS 11.71.010 – 11.71.030 or 11.71.040(a)(1) to a person who dies from ingestion of that controlled substance. (CSHB149(JUD)am-Sec.1, Similar to SB70-Sec.2)

Section 3. 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. (CSHB149(JUD)am-Sec.5, SB106 – Sec.1, SB70-Sec.4)

Section 4. Makes possession of more than nine grams 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. (CSHB149(JUD)am-Sec.6, SB70-Sec.4, SB106-Sec.1)

Section 5. Technical amendment.

Section 6. Makes anabolic steroids a schedule VA controlled substance. (CSHB149(JUD)am-Sec.8, SB70-Sec.5)

Section 7. 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. (CSHB149(JUD)am-Sec.11, CS106-Sec.4)

Section 8. Will require that a defendant who is facing charges for manufacturing methamphetamine and who has previously been convicted of manufacturing, delivering or possessing methamphetamine will have to post a minimum cash bond of \$250,000 to get out on bail. (SB70-Sec.6)

Section 9. The current sentencing statutes are amended to read that if a person commits a class A felony of manufacturing methamphetamine in a building where a minor is present or enlisting the assistance of a minor in the manufacture of methamphetamine the sentence is 7 to 11 years. (SB70-Sec.7, Similar to CSHB149(JUD)am-Sec. 3)

Section 10. The current sentencing statutes are amended to read that if a person commits a class B felony of manufacturing methamphetamine in a building where a minor is present or enlisting the assistance of a minor in the manufacture of methamphetamine the sentence is 2 to 4 years. (SB70-Sec. 8)

Section 11. 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. (CSHB149(JUD)am-Sec. 2, SB70-Sec.9)

Section 12. Creates requirement for distribution, registration, and record requirements for wholesalers, manufacturers, 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. (CSHB149-Sec 11, Similar to SB106-Sec.5)

Section 13. States that the Department of Conservation shall maintain a list on their Internet website of all properties that the property was an illegal drug-manufacturing site. (SB70(FIN)-Sec. 9)

Section 14. States that once the property has been determined fit for use it shall be marked as fit for use on the department's Internet website. (SB70(FIN)-Sec. 10)

Section 15. Section 9 of this Act has the effect of indirectly amending Rule 41, Alaska Rules of Criminal Procedure, by limiting the type and amount of bond that can be posted.

Section 16. States that Sections 2 – 13 and 16 of this Act apply to offenses committed on or after the effective date of this Act.

Section 17. Provides that this Act takes effect July 1, 2005.

CURRENT DIFFERENCES IN DRUG BILLS

CSSB 106 (I)	CSCSHB 149 ()	CSSB 70 (JUD) (F)
	Sec. 2. Makes it a crime of manslaughter if a person intentionally, knowingly, or recklessly manufactures or delivers a controlled substance in violation of AS 11.71.010 – 11.71.030 or 11.71.040(a)(1) to a person who dies from ingestion of that controlled substance. (P.2. L. 10-15)	Sec. 2. 11.41.120(a)(3) A person commits manslaughter if they knowingly manufacture or deliver a controlled substance in violation of AS 11.71, and a person dies as a direct result of ingesting the controlled substance; the death does not require a culpable mental state; ingesting means voluntary or involuntary. (P.2. L. 8-12) ¹
"A retailer of a product or substance that contains a detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, iodine, or crystal iodine may not dispense the substance..." (P. 5, L. 11 – 13).	"A retailer of a product or substance that contains (1) as the sole active ingredient ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or (2) iodine, or crystal iodine may not sell or dispense the product or substance..." (P.9. L. 27- P.10. L. 1-6)	
"... of the person..." (P. 5 L. 14)	"...of the purchaser..." (P. 9 L. 30)	
"...shall be allowed access to this log upon request." (P. 5 L 18 – 19).	"...shall have access to the log. The log and the information entered into the log is confidential. The retailer may not allow access to the log or release information contained within the log except to the Department of Public Safety or other law enforcement officers." (P. 10. L. 2-6).	
"A person may not offer to sell a product	"A person may not offer to sell a product or substance	

¹ Sec. 3 of CSSB70(JUD) was removed by the Senate Finance Committee in CSSB70(FIN). This was the section that gave affirmative defenses to the charge of manslaughter due to ingestion of a controlled substance.

CURRENT DIFFERENCES IN DRUG BILLS

or substance that contains ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, iodine, or crystal iodine unless that product..." (P. 5 ll. 20 – 22).	that contains (1) as the sole active ingredient ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, or (2) iodine, or crystal iodine unless that product or substance..." (P.10-L. 7-13)	
No similar language	"Nothing in this section limits the authority of a person regulated by this section to report to a law enforcement agency or officer suspicious purchases of a chemical, product, or substance." (P.10- L. 14-16)	
No similar language	"Upon the written request of any law enforcement agency, any wholesaler, manufacturer, distributor, or a retailer shall report electronically or by mail the information collected in (a) or (b) of this section for the subsequent six month period." (P.10-L. 22-24)	
No similar language	Section 8 – cash bond for meth production if previously convicted.	Section 5 – cash bond for meth production if previously convicted.
No similar language	Section 9 – Sentencing for class A felony Meth production	Section 6 – Sentencing for class A felony Meth production
No similar language	Section 10 – Sentencing for class B felony meth production	Section 7 – Sentencing for class B felony meth production
No similar language	Section 13 – DEC Internet website for drug contaminated properties requirements. No similar language	Section 9 – DEC Internet website for drug contaminated properties requirements.
No similar language	Section 14 – Requirement regarding noting on the DEC website that a property has been deemed fit for use.	Section 10 – Requirement regarding noting on the DEC website that a property has been deemed fit for use.

Spreadsheet of Meth Bills

CSSB 70 (FIN) Version L	CSHB 99 (JUD) Version G	CSSB 106	CSHB 149 (JUD)am
<p>Sec. 1. Uncodified. The activity of manufacturing meth presents such a high level of danger that mandatory minimum cash bail is required as set in Sec. 9 (p.1) (CSHB149-Sec.1)</p>	<p>Sec. 1. 11.41.120(a)(3) A person commits manslaughter if they knowingly manufacture or deliver a controlled substance in violation of AS 11.71, and a person dies as a direct result of ingesting the controlled substance; the death does not require a culpable mental state. (p.1) (Similar to SB70-Sec.2, HB149-Sec.1)</p>	<p>Sec. 1. 11.71.020(a)(5) MICS in the second degree is amended to add(5) possess meth in an organic solution with intent to extract meth (6) under circumstances not proscribed under AS 11.71.010(a)(2), delivers (A) an immediate precursor of meth, to another person to manufacture meth; or (B) a listed chemical to another person with reckless disregard that the listed chemical will be used to manufacture meth, an immediate precursor of meth or meth in an organic solution. (p.2) Similar SB70-Sec.4, HB99-Sec.5, 149-Sec-5)</p>	<p>Section 1. The uncodified law of the State of Alaska is amended to find that the illegal manufacture of methamphetamine subjects the public to the risk of fires, explosions, and toxic chemicals, as well as presenting a high level of danger to the community and to emergency responders which, justifies the requirement of the mandatory minimum cash bail required in sec. 9 of this Act. (SB70, Sec.1)</p>
<p>Sec. 2. 11.41.120(a)(3) A person commits manslaughter if they knowingly manufacture or deliver a controlled substance in violation of AS 11.71, and a person dies as a direct result of ingesting the controlled substance; the death does not require a culpable mental state; ingesting means voluntary or involuntary. (p.2) (Similar to CSHB149-Sec. 2)</p>	<p>Sec. 2. AS 11.51.100(c) redefines building. (p.2). (Same as SB70-Sec.9, HB149-Sec.6)</p>	<p>Sec. 2. 11.71.020 a new subsection is added. (d) more than nine grams of the listed chemicals ephedrine, pseudoephedrine, or phenylpropanolamine is prima facie evidence that the person intended to use the chemical to manufacture or aid another person to manufacture, or to deliver to another person who intends to manufacture meth with exceptions (p.3) (Similar to HB149 Sec.6)</p>	<p>Sec. 2. Makes it a crime of manslaughter if a person intentionally, knowingly, or recklessly manufactures or delivers a controlled substance in violation of AS 11.71.010 – 11.71.030 or 11.71.040(a)(1) to a person who dies from ingestion of that controlled substance. (CSHB149(JUD)am-Sec.1, Similar to SB70-Sec.2)</p>
<p>Sec. 3. 11.71.020(a) MICS in the second degree is amended to add (5) possess meth in an organic solution with intent to extract meth from the solution. (p.2) (Similar to HB 99-Sec.5, SB106-Sec1, and CSHB149-Sec. 3)</p>	<p>Sec. 3 AS 11.51.100(f) Endangering the welfare of a child under in the first degree under (a)(1) or (2), or (g) of this section is a class C felony. (p. 2) (Similar to SB70-Sec.7, HB149, Sec.3)</p>	<p>Sec. 3. 11.71.030(a) technical amendment to include new sections. (p.3)</p>	<p>Section 3. 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. (CSHB149(JUD)am-Sec.5, SB106 – Sec.1, SB70-Sec.4)</p>

Spreadsheet of Meth Bills

CSSB 70 (FIN) Version L	CSHB 99 (JUD) Version G	CSSB 106	CSHB 149 (JUD)am
<p>Sec. 4. 11.71.180 Makes anabolic steroids a Schedule VA controlled substance. includes, but not limited the following: (p.4-5) (Similar to CSHB149-Sec.6)</p>	<p>Sec. 4 11.51.100 (g) a person commits the crime of endangering the welfare of a child in the first degree if the person knowingly manufactures meth in violation of 11.71 in a building where a minor resides. Sec. 8 of CSSB 70 (JUD) address this in terms of sentencing. (p.3) (Similar to SB70-Sec.8, HB149-Sec.3)</p>	<p>Sec. 4. AS 11.71 a new section is added to article 2. 11.71.210 (a) A person commits the crime of purchase or receipt of restricted amounts of certain listed chemicals if a person purchases or receives more than nine grams of the following chemicals within 30-days: (1) ephedrine (2) pseudoephedrine (3) phenylpropanolamine. (b) exceptions to subsection (a). (c) Purchase or receipt of restricted amounts of chemicals is a class C felony. (p.4) (Same as HB149-Sec. 9)</p>	<p>Section 4. Makes possession of more than nine grams 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. (CSHB149(JUD)am-Sec.6, SB70-Sec.4, SB106-Sec.1)</p>

Spreadsheet of Meth Bills

CSSB 70 (FIN) Version L	CSHB 99 (JUD) Version G	CSSB 106	CSHB 149 (JUD)am
<p>Sec. 5. 12.30.023 If a defendant is charged with manufacturing meth under AS 11.71.020(a)(2), unless an aider or abettor who no financial gain, the court shall require the posting of a minimum of a \$250,000 cash bond if; (1) possessed a firearm while engaged in manufacturing; or (2) had previously been convicted of manufacturing, delivering, or possessing meth. (p.5) (CSHB149-Sec.8)</p>	<p>Sec. 5. 11.71.020(a) MICS in the second degree is amended to add (5) possess meth in an organic solution with intent to extract meth from the solution. (p.3) (Same as SB70-Sec.4, SB106-Sec.1, HB149-Sec.5)</p>	<p>Sec. 5. AS 17.30.090 is added to 17.30. (a) A wholesaler, manufacturer, or distributor of products containing ephedrine, psuedoephedrine, or P2P shall keep records of all transactions, including the names of all parties involved, the date of the transaction, and the amount of the product involved. The records are to be kept readily retriavable and shall be maintained for 3 years, and allow for in person inspection by law enforcement. (b) retailer selling products contianing the above and iodine or crystal iodine may not dispense the products without obtaining valid government photo id, signing of a written log showing date of transaction, name of purchaser, type of id and id number, and amount dispensed. (c) products containing the above must be kept behind a service ccurter (d) if municipality enacts an ordinance the seller shall regularly report the info. (e) defintions (f) a violation of (a), (b), or (c) of this section is a class A misdemeanor, punishable by a fine only of up to \$10,000. (p.5-6) (Similar to HB149-Sec.9)</p>	<p>Section 5. Technical amendment.</p>

Spreadsheet of Meth Bills

CSSB 70 (FIN) Version L	CSHB 99 (JUD) Version G	CSSB 106	CSHB 149 (JUD)am
<p>Sec. 6. The current sentencing statutes are amended to read that if a person commits a class A felony of manufacturing methamphetamine in a building where a minor is present or enlisting the assistance of a minor in the manufacture of methamphetamine the sentence is 7 to 11 years. (p.4-5) (CSHB149-Sec.9)</p>	<p>Sec. 6. The changes made in 1-5 of this Act apply to offenses committed on or after the effective date of this Act.</p>	<p>Sec. 6. Applicability. This Act applies to offenses committed on or after the effective date of this Act. (p.7)</p>	<p>Section 6. Makes anabolic steroids a schedule VA controlled substance. (CSHB149(JUD)am-Sec.8, SB70-Sec.5)</p>
<p>Sec. 7. The current sentencing statutes are amended to read that if a person commits a class B felony of manufacturing methamphetamine in a building where a minor is present or enlisting the assistance of a minor in the manufacture of methamphetamine the sentence is 2 to 4 years. (p.5-6) (CSHB149-Sec.10)</p>	<p>Sec. 7. This Act takes effect 07/01/05.</p>	<p>Sec. 7. This Act takes effect 07/01/05. (p.7)</p>	<p>Section 7. 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. (CSHB149(JUD)am-Sec.11, CS106-Sec.4)</p>
<p>Sec. 8. 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. (p.8) (CSHB149-Sec. 11)</p>			<p>Section 8. Will require that a defendant who is facing charges for manufacturing methamphetamine and who has previously been convicted of manufacturing, delivering or possessing methamphetamine will have to post a minimum cash bond of \$250,000 to get out on bail. (SB70-Sec.6)</p>

Spreadsheet of Meth Bills

CSSB 70 (FIN) Version L	CSHB 99 (JUD) Version G	CSSB 106	CSHB 149 (JUD)am
<p>Sec. 9. States that the Department of Conservation shall maintain a list on their Internet website of all properties that the property was an illegal drug-manufacturing site. (p.6-7) (CSHB149-Sec. 13)</p>			<p>Section 9. The current sentencing statutes are amended to read that if a person commits a class A felony of manufacturing methamphetamine in a building where a minor is present or enlisting the assistance of a minor in the manufacture of methamphetamine the sentence is 7 to 11 years. (SB70-Sec.7, Similar to CSHB149(JUD)am-Sec. 3)</p>
<p>Sec. 10. States that once the property has been determined fit for use it shall be marked as fit for use on the department's Internet website. (p.7) (CSHB149-Sec. 14)</p>			<p>Section 10. The current sentencing statutes are amended to read that if a person commits a class B felony of manufacturing methamphetamine in a building where a minor is present or enlisting the assistance of a minor in the manufacture of methamphetamine the sentence is 2 to 4 years. (SB70 Sec. 8)</p>
<p>Sec. 11. Section 9 of this Act has the effect of indirectly amending Rule 41, Alaska Rules of Criminal Procedure, by limiting the type and amount of bond that can be posted. (p.7) (CSHB149-Sec.15)</p>			<p>Section 11. 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. CSHB149(JUD)am-Sec. 2, SB70-Sec.9)</p>
<p>Sec. 12. States that Sections 2 – 8 and 11 of this Act apply to offenses committed on or after the effective date of this Act. (p.7) (Similar to CSHB149-Sec.16)</p>			<p>Section 12. Creates requirement for distribution, registration, and record requirements for wholesalers, manufacturers, 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. (CSHB149-Sec 11, Similar to SB106-Sec.5)</p>
<p>Sec. 13. Act takes effect 07/01/05. (p.7)</p>			<p>Section 13. States that the Department of Conservation shall maintain a list on their Internet website of all properties that the property was an illegal drug-manufacturing site. (SB70(FIN)-Sec. 9)</p>

Spreadsheet of Meth Bills

CSSB 70 (FIN) Version L	CSHB 99 (JUD) Version G	CSSB 106	CSHB 149 (JUD)am
			Section 14. States that once the property has been determined fit for use it shall be marked as fit for use on the department's Internet website. (SB70(FIN)-Sec. 10)
			Section 15. Section 9 of this Act has the effect of indirectly amending Rule 41, Alaska Rules of Criminal Procedure, by limiting the type and amount of bond that can be posted.
			Section 16. States that Sections 2 – 13 and 16 of this Act apply to offenses committed on or after the effective date of this Act.
			Section 17. Provides that this Act takes effect July 1, 2005.

AMENDMENT #1

OFFERED IN THE SENATE

TO: SCS CSHB 149(), Draft Version "M"

1 Page 4, lines 2 - 16:

2 Delete "The prima facie evidence described in this subsection does not apply to a
3 person who possesses the listed chemicals ephedrine, pseudoephedrine, phenylpropanolamine,
4 or the salts, isomers, or salts of isomers of those chemicals

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

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

9 (A) retailer or as a wholesaler;

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

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

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

15 (E) health care professional licensed by the state."

16 Insert "The prima facie evidence described in this subsection does not apply to a
17 person who possesses

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

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

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

- 1 (i) retailer or as a wholesaler;
2 (ii) wholesale drug distributor licensed by the Board of
3 Pharmacy;
4 (iii) manufacturer of drug products licensed by the
5 Board of Pharmacy;
6 (iv) pharmacist licensed by the Board of Pharmacy; or
7 (v) health care professional licensed by the state; or
8 (2) less than 24 grams of ephedrine, pseudoephedrine,
9 phenylpropanolamine, or the salts, isomers, or salts of isomers of those chemicals in a
10 home or business establishment under circumstances that are consistent with typical
11 medicinal or household use, as indicated by factors that include storage location,
12 purchase date, possession of the products in a variety of strengths, brands, types,
13 purposes, and expiration dates; the exception provided in this paragraph does not
14 apply if the substances in excess of nine grams were all purchased within a period of
15 thirty consecutive days unless purchased by a legitimate business for use in the
16 ordinary course of the business."

24-GS1049\L
Luckhaupt
4/16/05

CS FOR SENATE BILL NO. 70(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to controlled substances regarding the crimes of manslaughter and**
2 **misconduct involving a controlled substance; relating to listing certain anabolic steroids**
3 **as controlled substances; relating to the listing of property that constitutes an illegal**
4 **drug manufacturing site; amending Rule 41, Alaska Rules of Criminal Procedure; and**
5 **providing for an effective date."**

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

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

9 **FINDINGS.** The legislature finds that the illegal manufacturing of methamphetamine
10 of the type that is generally encountered in Alaska subjects anyone within a wide area to the
11 risk of fire, explosion, and toxic chemicals in gaseous, liquid, and solid form. This activity
12 presents such a high level of danger to the community and to law enforcement and
13 environmental personnel that the mandatory minimum cash bail required by sec. 5 of this Act

1
Bail Provision

1 is justified for defendants described in that section.

2 * Sec. 2. AS 11.41.120(a) is amended to read:

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

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

6 [OR]

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

8 (3) knowingly manufactures or delivers a controlled substance in
9 violation of AS 11.71, and a person dies as a direct result of ingesting the
10 controlled substance: the death is a result that does not require a culpable mental
11 state; in this paragraph, "ingesting" means voluntarily or involuntarily taking a
12 substance into the body in any manner.

13 * Sec. 3. AS 11.71.020(a) is amended to read:

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

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

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

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

22 or

23 (B) an immediate precursor of methamphetamine, or its salts,
24 isomers, or salts of isomers;

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

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

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

1 or

2 (B) an immediate precursor of methamphetamine, or its salts,
3 isomers, or salts of isomers; or

4 (5) possesses methamphetamine in an organic solution with intent
5 to extract from the solution methamphetamine salts, isomers, or salts of isomers
6 [ISOMER].

7 * Sec. 4. AS 11.71.180 is amended by adding a new subsection to read:

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

- 22 (1) boldenone;
- 23 (2) chlorotestosterone (4-chlorotestosterone);
- 24 (3) clostebol;
- 25 (4) dehydrochlormethyltestosterone;
- 26 (5) dihydrotestosterone (4-dihydrotestosterone);
- 27 (6) drostanolone;
- 28 (7) ethylestrenol;
- 29 (8) fluoxymesterone;
- 30 (9) formebulone (formebolone);
- 31 (10) mesterolone;

- 1 (11) methandienone;
- 2 (12) methandranone;
- 3 (13) methandriol;
- 4 (14) methandrostenolone;
- 5 (15) methenolone;
- 6 (16) methyltestosterone;
- 7 (17) mibolerone;
- 8 (18) nandrolone;
- 9 (19) norethandrolone;
- 10 (20) oxandrolone;
- 11 (21) oxymesterone;
- 12 (22) oxymetholone;
- 13 (23) stanolone;
- 14 (24) stanozolol;
- 15 (25) testolactone;
- 16 ~~(26) testosterone;~~
- 17 ~~(27) trenbolone.~~

18 * Sec. 5. AS 12.30.023 is amended by adding a new subsection to read:

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

27 * Sec. 6. AS 12.55.125(c), as amended by ch. 2, sec. 8, SLA 2005, is amended to read:

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

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

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

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

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

14 (i) the manufacturing occurred in a building with
15 reckless disregard that the building was used as a permanent or
16 temporary home or place of lodging for one or more children
17 under 18 years of age or the building was a place frequented by
18 children; or

19 (ii) in the course of manufacturing or in preparation
20 for manufacturing, the defendant obtained the assistance of one or
21 more children under 18 years of age or one or more children were
22 present;

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

24 (4) if the offense is a third felony conviction and the defendant is not
25 subject to sentencing under (1) of this section, 15 to 20 years.

26 * Sec. 7. AS 12.55.125(d), as amended by ch. 2, sec. 9, SLA 2005, is amended to read:

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

31 (1) if the offense is a first felony conviction and does not involve

1 circumstances described in (2) of this subsection, one to three years; a defendant
2 sentenced under this paragraph may, if the court finds it appropriate, be granted a
3 suspended imposition of sentence under AS 12.55.085 if, as a condition of probation
4 under AS 12.55.086, the defendant is required to serve an active term of imprisonment
5 within the range specified in this paragraph, unless the court finds that a mitigation
6 factor under AS 12.55.155 applies;

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

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

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

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

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

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

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

24 * Sec. 8. AS 12.55.185 is amended by adding a new paragraph to read:

25 (1) "building," in addition to its usual meaning, includes any propelled
26 vehicle or structure adopted for overnight accommodation of persons or for carrying
27 on business; when a building consists of separate units, including apartment units,
28 offices, or rented rooms, each unit is considered a part of the same building.

29 * Sec. 9. AS 46.03.500 is amended by adding a new subsection to read:

30 (f) The department shall maintain on its Internet website a list of all properties
31 for which a notice has been issued under (a) of this section. For each of those

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properties, the list must contain the parcel identification number, legal description, and physical address.

* Sec. 10. AS 46.03.550(b) is amended to read:

(b) The department shall maintain a list of properties for which the department has received notice under AS 46.03.500(c). When the department determines under (a) of this section that a property on the list is fit for use, the department shall note on the list maintained on its Internet website under AS 46.03.500(f), and on any other list or database it maintains related to illegal drug manufacturing sites, that the property is fit for use [REMOVE THE PROPERTY FROM THE LIST] and shall notify the owner of the property that the property is fit for use. On request, the department shall give a copy of the list maintained under this section to any person who requests the list.

* Sec. 11. The uncoded law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENT. Section 5 of this Act has the effect of amending Rule 41, Alaska Rules of Criminal Procedure, by limiting the type and amount of bond that can be posted to secure the pretrial release of certain defendants charged with manufacturing methamphetamine under AS 11.71.020(a)(2).

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

APPLICABILITY. Sections 2 - 8 and 11 of this Act apply to offenses committed on or after the effective date of this Act.

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

1 circumstances described in (2) of this subsection, one to three years; a defendant
 2 sentenced under this paragraph may, if the court finds it appropriate, be granted a
 3 suspended imposition of sentence under AS 12.55.085 if, as a condition of probation
 4 under AS 12.55.086, the defendant is required to serve an active term of imprisonment
 5 within the range specified in this paragraph, unless the court finds that a mitigation
 6 factor under AS 12.55.155 applies;

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

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

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

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

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

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

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

24 * Sec. 8. AS 12.55.185 is amended by adding a new paragraph to read:

25 (1) "building," in addition to its usual meaning, includes any propelled
 26 vehicle or structure adopted for overnight accommodation of persons or for carrying
 27 on business; when a building consists of separate units, including apartment units,
 28 offices, or rented rooms, each unit is considered a part of the same building.

29 * Sec. 9. AS 46.03.500 is amended by adding a new subsection to read:

30 (f) The department shall maintain on its Internet website a list of all properties
 31 for which a notice has been issued under (a) of this section. For each of those

Brian -

Sec. 9 & Sec. 10 were added
to SB 70 in Finance to
address the issue of realtors'
access to data on contaminated
sites.

Senate Green would appreciate
this language being added to
HB 149.

If you need a request in return
for in please let us know.

This language was crafted
by Law & DEC together.

thanks

trm x6581

1 properties, the list must contain the parcel identification number, legal description, and
2 physical address.

3 * Sec. 10. AS 46.03.550(b) is amended to read:

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

13 * Sec. 11. The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 INDIRECT COURT RULE AMENDMENT. Section 5 of this Act has the effect of
16 amending Rule 41, Alaska Rules of Criminal Procedure, by limiting the type and amount of
17 bond that can be posted to secure the pretrial release of certain defendants charged with
18 manufacturing methamphetamine under AS 11.71.020(a)(2).

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

21 APPLICABILITY. Sections 2 - 8 and 11 of this Act apply to offenses committed on
22 or after the effective date of this Act.

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

Representative Jay Ramras
Co-Chair, House Resources
V-Chair, Economic Develop.
Tourism & Trade

House State Affairs
119 N. Cushman St. Suite 207
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 452-1146

Alaska State Legislature



While in Session
State Capitol, Room 104
Juneau, Alaska 99801-1182
(907) 465-3004
Fax: 465-2070
Toll Free: (877) 465-3004

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.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB149CS-DPS-LAB-4-21-05
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title "An Act relating to controlled substances; RDU Statewide Services
relating to the crimes of manslaughter..." Component Laboratory Services
 Sponsor Representative Ramras
 Requester Senate Judiciary Committee Component No. 527

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	5.77					
Travel	2.5					
Contractual						
Supplies	5.9					
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	14.17	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	14.17					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	14.17	0	0	0	0	0

Estimate of any current year (FY2005) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Section 8 of this legislation adds anabolic steroids to the language in statute for controlled substances under Schedule VA. (The V in this reference is the Roman numeral for the number five, thus VA would be read as 5-A).

This action will require the state crime lab to begin testing for anabolic steroids as defined in this section. The crime lab will have to send a drug criminalist to the Drug Enforcement Agency (DEA) laboratory in San Francisco, California for a full week of training. The drug testing methodologies will then have to be validated in the state's crime lab.

This will require the purchase of drug standards for the most common steroids which must then be run

Prepared by: Director David Schade Phone 907-269-0202
 Division Statewide Services Date/Time 4/21/05 1:19 PM
 Approved by: Commissioner William Tandeske Date 4/21/2005
 Agency Department of Public Safety

FISCAL NOTE

**STATE OF ALASKA
2005 LEGISLATIVE SESSION**

BILL NO. HB149CS-DPS-LAB-4-21-05

ANALYSIS CONTINUATION

through the lab's equipment for authentication. Drug standards must be regularly added as new forms of the substances are developed and presented in criminal cases.

The criminalist must develop lab protocols for the state lab based on DEA protocols and then update the lab's various manuals and protocols. For example, the drug standard quality control manual, the reagent quality control manual, and the instrument and scale maintenance logs will periodically have to be updated. All hard copies and electronic versions of these manuals, protocols, and logs must be updated. Copies are provided for national lab certification processes, prosecutors' offices, discovery purposes, and for the lab.

The amounts reflected above are a one time cost for initiating this testing regime. The department will try and absorb the future costs in the normal budget process.

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
 Component: Criminal Justice Litigation
 Sponsor: Representative Ramras
 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 Daughhetee, Director Phone 465-3673
 Division: Administrative Services Division Date/Time 3/6/05 12:32 PM
 Approved by: K. Daughhetee for Scott Nordstrand, Acting Attorney General Date 3/6/2005
 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
 Component: Public Defender Agency
 Sponsor: Reps. Ramras, Wilson, Lynn...
 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						
Temporar.						

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

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: CSHB 149(JUD)
 (H) Publish Date: 3/14/05

Revision Date/Time (Note if correction):
 Title: Sale of Methamphetamine and Precursors
 Sponsor: Ramras, Wilson, Lynn
 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	2.0	2.0	2.0	2.0	2.0	2.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	2.0	2.0	2.0	2.0	2.0	2.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1156)	2.0	2.0	2.0	2.0	2.0	2.0
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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	2.0	2.0	2.0	2.0	2.0	2.0
TOTAL	2.0	2.0	2.0	2.0	2.0	2.0

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)

HB 149 establishes a requirement that certain categories already licensed by the Alaska Board of Pharmacy as a manufacturer, wholesaler, and distributor of certain chemicals register annually with the department (Board) all transactions relating to the drugs specified in the bills; and requires the Board to keep the records for three years. The costs identified above are to cover preparation and printing of the transaction forms and mailing costs associated with notifying licensees of the new requirement.

Prepared by: Jenniter Strickler, Administrative Manager Phone (907) 465-2144
 Division: Occupational Licensing Date/Time 3/7/05 12:22 PM
 Approved by: Edgar Blatchford, Commissioner Date 3/7/2005
 Agency: Commerce, Community, and Economic Development

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 6
 Bill Version: CSHB 149(FIN)
 (H) Publish Date: 4/11/05

Revision Date/Time (Note if correction):
 Title Sale of Methamphetamine
and Precursors
 Sponsor Ramras, Wilson, Lynn
 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
------------------------------------	------------	------------	------------	------------	------------	------------

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
 Division: Occupational Licensing
 Approved by: Edgar Blatchford, Commissioner
 Agency: Commerce, Community, and Economic Development

Phone: (907) 465-2144
 Date/Time: 3/15/05 5:03 PM
 Date: 3/15/2005

Representative Jay Ramras
Co-Chair, House Resources
V-Chair, Economic Develop.
Tourism & Trade
House State Affairs

119 N. Cushman St. Suite 207
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 452-1146

Alaska State Legislature



While in Session
State Capitol, Room 104
Juneau, Alaska 99801-1182
(907) 465-3004
Fax: 465-2070
Toll Free: (877) 465-3004

House District 10

House of Representatives

Sectional Summary

Blank Sponsor Substitute for HB 149(FIN) am, Methamphetamine/Pseudoephedrine/Anabolic Steroids Work Order 24-LS0596\B.A

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, manufacturers, 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.



NATIONAL CONSUMERS LEAGUE

1701 K Street, NW, Suite 1200, Washington, DC 20006
PHONE (202) 835-3323 FAX (202) 835-0747 www.nclnet.org

March 24, 2005

Re: Methamphetamine Legislation

Dear State Legislator:

National Consumers League is concerned about federal and state legislation introduced to address the very serious problem of diversion of over-the-counter drug products containing pseudoephedrine to the illicit manufacture of methamphetamine. NCL is a national nonprofit consumer advocacy organization representing consumers in the marketplace and the workplace. Founded in 1899, NCL is the nation's oldest consumer organization. Drug safety, access to medicines, and affordability have been longstanding concerns of NCL. A growing number of federal and state proposals would place pseudoephedrine in Schedule V under the Controlled Substances Act and require that cough and cold medications containing pseudoephedrine be dispensed only from behind the pharmacy counter.

NCL is concerned that in the important fight against illicit methamphetamine manufacture, access to primary healthcare products is maintained, including availability of safe, effective, and affordable medicines. Any restrictions that are placed on OTC drug products containing pseudoephedrine must be no more than necessary and practical. To do otherwise will limit therapeutic choices and could increase healthcare costs for consumers.

If sales of OTC drug products containing pseudoephedrine must be restricted because of their misuse, the burden of such restrictions should not be borne by consumers who depend on and properly use the products. Pseudoephedrine is a versatile medicine and one which the Food and Drug Administration has determined can be used safely and effectively through self-care of the patient. Decongestants are an everyday household product found in most family medicine cabinets. People need and use decongestants for common colds as well as treatment of seasonal and other allergies. The broad array of OTC products containing pseudoephedrine underscores the fact that large numbers of Americans have come to rely on these self-care products for safe, effective, and affordable relief.

Pseudoephedrine as a decongestant is also often coupled with antihistamines, such as in Sudafed® and Sinutab®. Reformulation of these products without pseudoephedrine, which also has stimulant effects, will leave consumers only with products that may cause drowsiness. This will result either in increased dangers for persons who take these medications, or consumers that must suffer from easily treated conditions because they cannot take the chance of falling asleep.

Not all OTC pseudoephedrine products are equally amenable to diversion; liquids, liquid capsules and gel capsules, as well as certain products that combine pseudoephedrine with other active ingredients, are much less useful in the illicit manufacture of methamphetamine. Several of

the bills do provide for sales by persons other than pharmacists when the absence of a pharmacy to distribute these products in a community would create a hardship. NCL, however, has significant concerns regarding the implementation of these provisions. Many rural and economically disadvantaged communities in America are underserved by pharmacies or large retail chains with pharmacies. Sometimes it is the local convenience or small grocery store which is the source of OTC drugs for rural populations. Under the proposed legislation, the decision on what constitutes a hardship is left undefined. Consumers should not be limited to safe and effective medicines based on where retailers decide to have a pharmacist on duty.

Conversion of these products to pharmacy-only status would have other direct and indirect effects, all of which would restrict therapeutic choices and raise healthcare costs. Pharmacies are generally served under a different distribution system, often by different distribution companies, than other retailers of OTC drug products. Pharmacy shelf space is limited. Manufacturers and distributors of these OTC drug products would be required to alter their distribution practices, and a significant portion could be effectively forced off the market because of simple lack of room. While decreasing the overall amount of product available may have some small impact on misuse of the product, the more likely effect would be a lessening of competition for these OTC drug products and potential price increases.

If restrictions are necessary, they should be tailored to the problem at hand, which is diversion of OTC drug products to illicit methamphetamine manufacture. This criminal activity relies on access to large quantities of OTC pseudoephedrine. NCL believes that retail transactions can be controlled by responsible retailers through a number of means. California, for example, has witnessed a significant reduction in clandestine laboratory seizures after tightening the single retail transaction limit on OTC drug products containing pseudoephedrine. A recently enacted Illinois law, ILL. ANN. STAT. ch. 720, § 647/1 (2004), is another good example of reasonable measures that could be employed. It provides for the following:

- Retail sales are limited to 2 packages or 6 grams per transaction.
- Self-service transactions are subject to special procedures that stop purchases over the retail limit.
- Single active ingredient products may only be displayed for sale
 - behind a store counter (not a pharmacy counter) that is not accessible to consumers; or
 - in a locked case that requires assistance by a store employee for customer access.
- Multi-active ingredient products may
 - be displayed behind a store counter (not a pharmacy counter), not accessible to consumers;
 - be displayed in a locked case that requires assistance by a store employee for customer access;
 - be sold if the retailer requires the customer to show ID and sign a log; or
 - be sold from the sales floor if the retailer adopts at least two of the following four options:
 - product must be kept within 30 feet and direct line of sight of a cash register or store counter staffed by one or more store employees;
 - reliable anti-theft devices are used on packages;
 - restricted access shelving is used so that only one package may be

removed by a consumer at a time and a delay of at least 15 seconds occurs between package replacement on shelf;

affected product is kept under constant video surveillance.

- Liquids, liquid cap, and gel caps product containing pseudoephedrine are exempt.
- Retail personnel must be trained and certified with respect to special procedures used in the sale of covered OTC drug products containing pseudoephedrine.

Your State Legislature should consider similar features in regulating retail distribution of OTC drug products containing pseudoephedrine.

NCL looks forward to the opportunity to work with you to address the serious problem of illicit methamphetamine manufacture while preserving safe, effective, and affordable medicines for the American consumer.

Sincerely,



Linda F. Golodner
President



Consumer Healthcare
Products Association

March 8, 2015

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

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 at least 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) 307-4570

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 employee's 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

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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FEB-10-2005 THU 11:03 AM

FAX NO.

P. 02



RECEIVED
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DIVISION OF
OCCUPATIONAL LICENSING
JUNEAU

DIVISION OF OCCUPATIONAL LICENSING

Frank H. Markowski, Governor

February 3, 2005

The Honorable Peggy Wilson
Chair, House HBSS 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.

Oakley

Sincerely,

Cindy Bauer

Cindy Bauer, 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 Sources", *Anchorage Daily News*, Jan 30, 2005, p.A3.

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

Telephone: (907) 463-2534 Fax: (907) 465-2974 Text Telephone: (907) 465-5437

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

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.

PSE State Legislation Update

Updated 03/18/05



Pseudoephedrine and Methamphetamines

Background

- *Pseudoephedrine (PSE) is an orally ingested nasal decongestant available in many single ingredient and multi-ingredient OTC Cold, Allergy, and Sinus products.*
- *PSE is a precursor for the illicit production of methamphetamine. While clearly not the primary source, there is concern that some individuals are extracting PSE from OTC medications for use in manufacturing methamphetamines.*
- *According to DEA, approximately 80% of methamphetamine is produced in Mexico, Canada, India, and China. It is brought into the U.S. and distributed by professional drug traffickers, particularly Mexican gangs.*
- *The remainder of the meth is produced in the U.S. in small, clandestine labs. These labs typically yield only enough for the meth cook's own personal use.*
- *Small, home-made labs have a devastating effect on the communities in which they are found. While it is essential to eradicate these mini-labs, it is important to recognize that 80% of the meth problem comes from the larger drug cartels.*

Pseudoephedrine Legislation Is A Fluid Situation

Federal Regulation

- *PSE is regulated at the federal level as a List 1 (precursor) chemical under the Controlled Substances Act administered by the DEA.*
- *Retail outlets are permitted to sell OTC products containing PSE under the following conditions:*
 - *Solid oral dosage forms must be packaged in a blister card*
 - *No more than two dosage units are contained in each blister cell*
 - *Each package contains no more than 3 grams of PSE “base”**
- *The DEA also believes that there is an additional restriction that no more than 9 grams of PSE base can be sold in a single transaction. The industry disputes this interpretation.*

**PSE salt (sulfate) contains only about 70% of PSE “base.” The amount of salt is what appears on SP CHC product labels.*

PSE Content: “Base” vs. “Salt”

- *Pseudoephedrine “salt” (i.e. pseudoephedrine sulfate) contains only about 70% of pseudoephedrine “base.”*
- *The amount of “salt” is what appears on SPCHC product labels.*
- *Some states have unwittingly adopted legislative language that limits PSE products to 3 grams of PSE “salt, isomers, optical isomers, or hydrochloride (HCl)” per package.*

*Per the calculation noted in the first bullet point above, this exceeds the federal restriction of 3 grams of PSE “**base**” per package, and prohibits the sale of the following SPCHC products:*

- *Claritin D-12 30 count tablets*
- *Claritin D-4 15 count tablets*
- *Drixoral Cold & Allergy 30 count tablets*

Schering-Plough CHC Products That Contain PSE

The chart below details each SPCHC item that contains PSE, its active ingredients, the amount of PSE "base" per package, and the amount of PSE "salt" per package.

Item	Tablet Count	Dosage Form	Single Ingredient PSE?	Active Ingredients (Per Tablet)	Amount of PSE Base Per Package	Amount of PSE Salt Per Package
Claritin D-12	10	Tablet	No	Loratadine 5mg	0.93 grams	1.2 grams
Claritin D-12	20	Tablet	No	PSE Sulfate 120mg	1.86 grams	2.4 grams
Claritin D-12	30	Tablet	No		2.79 grams	3.6 grams
Claritin D-24	5	Tablet	No	Loratadine 10mg	0.93	1.2 grams
Claritin D-24	10	Tablet	No	PSE Sulfate 240mg	1.86	2.4 grams
Claritin D-24	15	Tablet	No		2.79	3.6 grams
Claritin D-24 (Club Pack for Costco, etc.)	30 (3x10)	Tablet	No		5.58 (1.86/pkg)	7.2 grams (2.4/pkg)
Drixoral Cold & Allergy	10	Tablet	No	Dexbropeniramine 6mg	0.93 grams	1.2 grams
Drixoral Cold & Allergy	20	Tablet	No	PSE Sulfate 120mg	1.86 grams	2.4 grams
Drixoral Cold & Allergy	30	Tablet	No		2.79 grams	3.6 grams
Drixoral Cold & Flu	12	Tablet	No	Dexbropeniramine 3mg PSE Sulfate 60mg Acetaminophen 500mg	0.56 grams	0.72 grams
Drixoral Allergy Sinus	12	Tablet	No	Dexbropeniramine 3mg PSE Sulfate 60mg Acetaminophen 500mg	0.56 grams	0.72 grams
Drixoral Nasal Decongestant	10	Tablet	YES	PSE Hydrochloride 120mg	0.99 grams	1.28 grams
Drixoral Nasal Decongestant	20	Tablet	YES		1.98 grams	2.55 grams
Coricidin D	24	Tablet	No	Acetaminophen 325mg Chlorpheniramine 2mg PSE sulfate 30mg	0.56 grams	0.72 grams
Chlor-Trimeton Allergy D	24	Tablet	No	Chlorpheniramine 4mg PSE hydrochloride 60mg	1.19 grams	1.53 grams PSE HCl

The following slides provide information regarding state legislation which has been passed and is more restrictive than the Federal laws on PSE.

This information represents our interpretation of state and federal law affecting retail sale of pseudoephedrine containing products. While we believe it is current and accurate, we are providing it strictly as a service to you and we assume no obligation to update it. You should rely solely on your own legal counsel for interpretation of state and federal legislation.

State Legislation Beyond Federal Law*

To date, a number of states have passed their own laws restricting the sale and/or possession of OTC products that contain PSE.

1. Alabama
2. Arizona
3. Arkansas
4. California
5. Georgia
6. Illinois
7. Indiana
8. Iowa
9. Kentucky
10. Louisiana
11. Michigan
12. Mississippi
13. Missouri
14. Nebraska
15. New Mexico
16. North Dakota
17. Oklahoma
18. Oregon
19. South Dakota
20. Texas
21. Utah
22. Washington State
23. Wyoming



The degree of restrictiveness varies from state-to-state.

Many state laws exempt PSE pediatric products, liquid products, gel tabs and/or liqui-gels.

* Sources: CHPA; Buzzeo PDMA; Covington & Burling

**Some States Have Passed Legislation
That Restricts Consumer Access to OTC PSE Products:
Schedule V and Behind-the-Counter Status**

Oklahoma

Schedule V

- Oklahoma has classified PSE as a Schedule V controlled substance. Under this law, products containing PSE can only be sold through a retail pharmacy as follows:
 - Must be housed behind a pharmacy counter and dispensed by a licensed pharmacist or pharmacy technician
 - Any person purchasing must produce a photo ID proving they are at least 18 years of age
 - Purchasers must sign a written log
 - No person shall purchase more than 9 grams of PSE in a 30 day period
 - Combination ingredient liquid products are exempt
- This law affects the following SPHCP products:
 - Claritin D 12 hr (all skus)
 - Claritin D 24 hr (all skus)
 - Drixoral Cold & Allergy (all skus)
 - Drixoral Allergy Sinus (all skus)
 - Drixoral Cold & Flu (all skus)
 - Drixoral Nasal Decongestant (all skus)
 - Coricidin-D
 - Chlor-Trimeton D 4 hr

Arkansas

Schedule V

- Arkansas has classified PSE as a Schedule V controlled substance. Under this law, products containing PSE can only be sold through a retail pharmacy as follows:
 - Must be housed behind a pharmacy counter and dispensed by a licensed pharmacist or pharmacy technician
 - Any person purchasing must produce a photo ID proving they are at least 18 years of age
 - Purchasers must sign a written log
 - No person shall purchase more than 9 grams of PSE in a 30 day period
 - No person shall possess more than 9 grams of PSE
- Product must be sold in blister packs of not more than 3 grams of PSE as calculated on the base. Each blister cell can contain not more than 2 dosage units.
- Product cannot contain more than 96 tablets, gelcaps, or capsules per package.
- Liquid products, liquid capsules and liquid gel capsules are exempt.
- This law affects all SPHCP PSE products.

Iowa

Schedule V

Effective 60 days from enactment or July 1 2005, whichever comes sooner.

- Iowa has classified PSE as a Schedule V controlled substance. Under this law, products containing PSE can be sold only through a retail pharmacy as follows:
 - Must be housed in a locked cabinet behind a pharmacy counter and dispensed by a licensed pharmacist or pharmacy technician
 - Consumer must produce a photo ID
 - Purchasers must sign a written log
 - No person shall purchase more than 7.5 grams of PSE in a 30 day period
- Liquid products, liquid capsules and gel capsules can be sold in stores that do not have pharmacies only if the following criteria all are met:
 - Package contains no more than 360 mg PSE (0.36 grams) **AND**
 - Product is stored behind a counter or in a locked cabinet **AND**
 - Only 0.36 grams of these products can be purchased in a 24-hour period
- This law affects all SPHCP PSE products.

Some States Have Passed Legislation That Restricts Consumer Access to OTC PSE Products: Schedule V and Behind-the-Counter Status

Schedule V



Effective 90 days after the General Assembly adjourns.
Estimated effective date: June 15, 2005

- Kentucky has classified PSE as a Schedule V controlled substance. Under this law, products containing PSE can only be sold through a retail pharmacy as follows:
 - Must be housed behind a pharmacy counter and dispensed by a licensed pharmacist or pharmacy technician
 - Any person purchasing a PSE product must produce a photo ID proving they are at least 18 years of age
 - Purchasers must sign a written log
 - No person shall purchase more than 9 grams of PSE in a 30 day period (no reference of base vs. salt)
- Transaction limit of 3 packages per transaction
- Liquids, liquid capsules, and gel capsules are exempt.

Modified Schedule V



Emergency Rule: October 14, 2004

- OR state legislature was not in session
- Governor directed the Board of Pharmacy to implement an "Emergency Rule"
- Single ingredient PSE products can be sold only from behind the pharmacy counter. They cannot be sold in stores that do not have a pharmacy.
- A variation on a true Schedule V: Combination PSE products can be sold only from behind a pharmacy counter, customer service counter, or other store counter where only store personnel have access to the product.
- Transaction limit of 9 grams (calculated on the salt)
- Certain liquid and pediatric products are exempt.
- Purchasers of these restricted products are required to show a photo identification. (School-issued IDs are acceptable, since the new rule does not impose an age limit on these products.)
- Retailers were given 30 days in which to comply. If they are not in compliance, they will receive a warning notice and then must be in full compliance within 30 days from the date of the notice.
- The emergency rule will remain in effect for 180 days. During that time the Pharmacy Board intends to establish a stakeholder working group to develop the permanent rule

Some States Have Passed Legislation That Is More Restrictive Than Federal Regulations



Washington



North Dakota

- Prohibits the retail sale of any package that contains more than 3 grams of PSE
 - Washington: Calculated on the "salt" (sulfate) (PSE "salt" contains only about 70% of PSE "base")
 - North Dakota: Calculated on HCl
- SPHCP products affected:
 - Claritin D 12 hr 30ct
 - Claritin D 24 hr 15 ct
 - Drixoral Cold & Allergy 30ct
- In order to assist retailers in complying with the law, SPHCP does not ship these items to stores or distribution centers in North Dakota.
- Based upon an exemption granted in August 2004 by the Washington State Board of Pharmacy, SPHCP is able to ship these products to stores and distribution centers in Washington State.
- Washington
 - Limit of 3 packages per transaction
 - Certain pediatric products are exempt
- North Dakota
 - Limit of 2 packages per transaction
 - Age restriction of 18+
 - Liquid and pediatric products are exempt



Missouri

Single Ingredient PSE

- Must be kept behind the counter or within 10 ft of check-out counter with an unobstructed view or under use of an anti-theft device (e.g. EAS tags)
- Transaction restriction of 2 pkgs or 6 gms (as calculated on the salt)

Combination Products

- Transaction limit of 3 pkgs or 9 grams of PSE (calculated on the "salt")
 - PSE "salt" contains only about 70% of PSE "base"
- Pediatric products are exempt
- This prohibits the sale of 3 or more packages of the following SPHCP products:
 - Claritin D 12 hr 30ct
 - Claritin D 24 15ct
 - Drixoral Cold & Allergy 30ct

Note: MS legislature is still in session as of 03/14/05. Legislation can still change during this session.

Effective July 1, 2005:



Mississippi

All PSE Products

- 3 grams of PSE per package limit (calculated on the salt)
- 2 packages or 6 grams per transaction limit
- 9 gram purchase and acquisition limit per 30-day period
- 24 gram possession limit (calculated on the salt)
- Photo ID required for all PSE transactions (no age restriction cited)
- Law goes into effect July 1, 2005

Single Ingredient PSE Products

- Product must be kept behind-the-counter or in a locked display case so that the product is not accessible to consumers without employee assistance.

Combination Products

- Product can be merchandised on the retail shelves if it is placed within 30 feet of a cashier or if the product is under video surveillance
- If neither of the above criteria can be met, the product must be kept behind-the-counter or in a locked display case so that it is not accessible to consumers without employee assistance.

Some States Have Passed Legislation That Is More Restrictive Than Federal Regulations

Note: SD legislature is still in session as of 03/14/05. Legislation can still change during this session.

**South
Dakota**

Effective July 1, 2005:

All PSE Products

- 2 package limit per transaction
- Retailer must post signs alerting consumers of this transaction limit
- Pre-empts all county and municipal ordinances that would attempt to enact more stringent provisions

Single Ingredient PSE Products

- Product can remain on the retail shelves only if it is displayed in conjunction with an anti-theft device system, such as EAS tags (Electronic Article Surveillance)
- In the absence of an anti-theft device system, the product must be shelved behind-the-counter or in a locked display case so that the product is not accessible to consumers without employee assistance.
- Pediatric, liquid, liquid cap, and gel cap single ingredient PSE products must be displayed in accordance with the combination product restrictions, outlined below.

Combination PSE Products

- Product can remain on the retail shelves if it is displayed in conjunction with an anti-theft device system, such as EAS tags (Electronic Article Surveillance)
- In the absence of an anti-theft device system, the product must be within 20 feet and within an unobstructed view of an employee-manned counter.

Illinois

- Legislation passed Aug 24, 2004
- Single ingredient PSE products must be kept behind the counter or in a locked case.
- 3-gram limit of PSE per package (calculated on the *safe*). SPHCP products affected:
 - Claritin D 12 hr 30ct
 - Claritin D 24 hr 15 ct
 - Drixoral Cold & Allergy 30ct
- 2 package limit of all products containing pseudoephedrine
- Includes additional retail merchandising restrictions. To maintain consumer access to combo products at shelf, retailers must choose 2 of the following. The first option must be implemented by 1/1/05, the second option by 7/1/05:
 - EAS tagged product
 - If a retailer chooses this as the first option for implementation, they must ensure that 50% of all PSE units are tagged by 1/1/05, and that 100% of PSE units are tagged by 7/1/05
 - Merchandise PSE combo products within 30 feet and in direct line of sight of a cash register or store counter staffed by one or more employees
 - Provide 24-hour video surveillance
 - Implement shelving units that allow only 1 package to be removed at a time, with a 15-second delay between packages
- Liquid PSE products are exempt

Wyoming

Effective July 1, 2005:

All Non-Liquid PSE Products

- Prohibits the retail sale of any package that contains more than 3 grams of PSE base
- Solid dosage form product must be sold in blister packs.
- Powder must be sold in unit dose packets or pouches.

Retail Merchandising Restrictions

Product can remain on the retail shelves if one of the following provisions is met:

- Product must be displayed within 30 feet of a staffed check-out *and* the store must employ a reliable alarm system to prevent theft (e.g. EAS tags) *OR*
- The product must be merchandised in an area that is monitored by a constant video surveillance system.
- If neither of the above criteria can be met, product must be shelved behind-the-counter or in a locked display case so that the product is not accessible to consumers without employee assistance.

Some States Have Passed Legislation That Is More Restrictive Than Federal Regulations



- Legislation passed May, 2004
- Single ingredient products that contain 60 mg or more of PSE per tablet must be kept behind the pharmacy or customer service counter.
- 3 pkg limit on all products that contain PSE.
- 9 gram transaction limit. There is no reference to the basis of the 9 gram calculation (i.e. base vs. salt).
- Pediatric products are exempt.



- Transaction limit of 2 blister packages (up to 6 grams of PSE) per transaction. Does not specify base vs. salt.
- Retailers cannot "knowingly or intentionally sell" more than 6 grams of PSE to the same individual within a 7-day period.
- Products must be placed in direct sight of store personnel and not more than 20 feet away from a cash register.
- Retailers must develop and implement a training program to be read and signed by all store personnel.
- All manufacturers, wholesalers, and retailers not currently licensed by the Board of Pharmacy must obtain a precursor license to sell PSE products.
- The regulations were published in the December 30, 2004 issue of the "New Mexico Register".



Some States Have Passed Legislation That Differs From Federal Regulations



- Transaction limit of 24 grams/transaction
(Does not specify calculation on base vs. salt)
- Illegal to possess > 24 grams
(Does not specify calculation on base vs. salt)



- Transaction limit of 3 pkgs and 9 grams
- Does not specify base vs. salt in calculation
- Pediatric products are exempt from the 9 gram transactional limit

Some States Have Passed Possession Restrictions But Not Transaction Restrictions



- Georgia: Possession limit of 9 grams (calculated on salts and isomers) or 300 tablets
- Indiana: Possession limit of 10 grams (calculated on salts and isomers)
- Louisiana: Possession limit of 12 grams (calculated on salts and isomers)
Certain pediatric products are exempt
- Michigan: Possession limit of 12 grams (no reference to base vs. salts and isomers)
Pediatric products are exempt
- Nebraska: Possession with the intent to manufacture methamphetamine is prohibited
Sale or distribution of PSE with knowledge that it will be used for meth production is prohibited
- Texas: Possession limit of 9 grams (no reference to calculation on base vs. salt) or 3 pkgs or 300 tablets.
Applies only to possession in conjunction with possession of other specifically listed chemicals such as anhydrous ammonia.
- Utah: Possession limit of 12 grams (calculated on salts and isomers)

***Schering-Plough's Position
on Effective Legislation Regarding PSE***



Schering-Plough's Position on Effective Legislation

Schering-Plough and the member companies of CHPA advocate a comprehensive approach to combating the methamphetamine problem:

- *Support federal preemption bill which includes "safe harbor packaging" that places a 3 gram limit of PSE base per package. (All SGP products are in compliance with this federal provision.)*
- *Implement MethWatch to curtail the sale of PSE for illicit use*
- *Place retail sales limits on methamphetamine precursors*
 - *2 package / 6 gram sales limit of base PSE per transaction*
- *Increase criminal penalties for those producing and selling methamphetamines*

Schering-Plough's Position on Effective Legislation (continued...)

- *Provide grants at the local level to fund environmental clean-up associated with meth labs*
- *Provide grants for education, prevention, and treatment of methamphetamine abuse.*
 - *CHPA and The Partnership for a Drug Free America (PDFA) have launched two successful pilot programs in St. Louis and Phoenix.*
- *Enact stronger laws protecting drug-endangered children.*
- *Provide federal funding for DEA enforcement of methamphetamine laws. Increase funding for law enforcement efforts through the Office of National Drug Control Policy (ONDCP) Youth Anti-Drug media campaign.*

***A Case Study in Success:
MethWatch***



A Case Study in Success: MethWatch

Kansas retailers have partnered with law enforcement to implement a multi-pronged program called "MethWatch," which reportedly has resulted in a significant reduction in meth lab seizures since its implementation in mid-2001. SPCHC supports CHPA's efforts to extend this program nationally.

Program Elements

- *Product is placed in consistently staffed areas*
 - *in view of customer service counter*
 - *in view of pharmacy*
 - *at check-out counter*
 - *in aisles with video surveillance*
 - *at end of aisle in high-traffic area*
- *Limit number of packages on shelf*
- *Use MethWatch shelf tags, door decals, cash register decals*
- *Limit number of packages per purchase*

A Case Study in Success: MethWatch

Additional Retailer Involvement

- *Report suspicious transactions to law enforcement*
- *Educate consumers by providing them with MethWatch information*
- *Train employees to administer the program*

Key Benefits to Retailers

- *Safer stores*
- *Better consumer relations*
- *Reduced theft*
- *Increased employee awareness*
- *Better relations with local law enforcement*
- *Unifying communities in working towards reducing drug abuse*

Metrics

- *Major KS retailer adopted MethWatch and reportedly saw > 85% theft reduction.*
- *Meth lab seizures reportedly have decreased by 23% since 2001.*
- *WA state reports 50% reduction of meth busts since MethWatch.*

Q & A

Q & A

What is the status of legislation in the 30 states not covered in this presentation?

To our knowledge, there are no enacted state laws in these states which restrict the otherwise legitimate retail sale of PSE-containing products. There may be localities within a state that have enacted restrictive ordinances or there may be pending bills or regulation but we do not cover these, if any in this document.

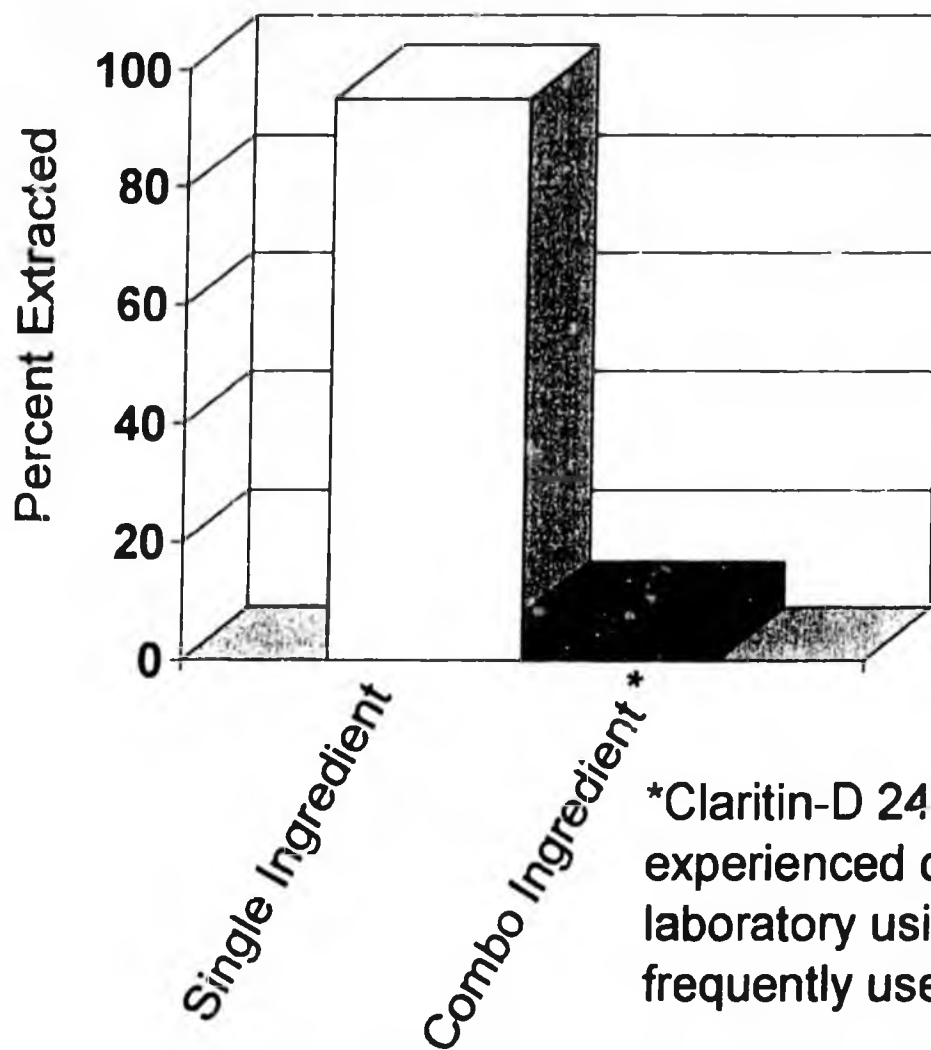
Are there plans to reformulate Schering-Plough products which contain PSE?

We do not share or comment on our future product plans.

Will Schering-Plough accept returns of its products containing PSE from customers?

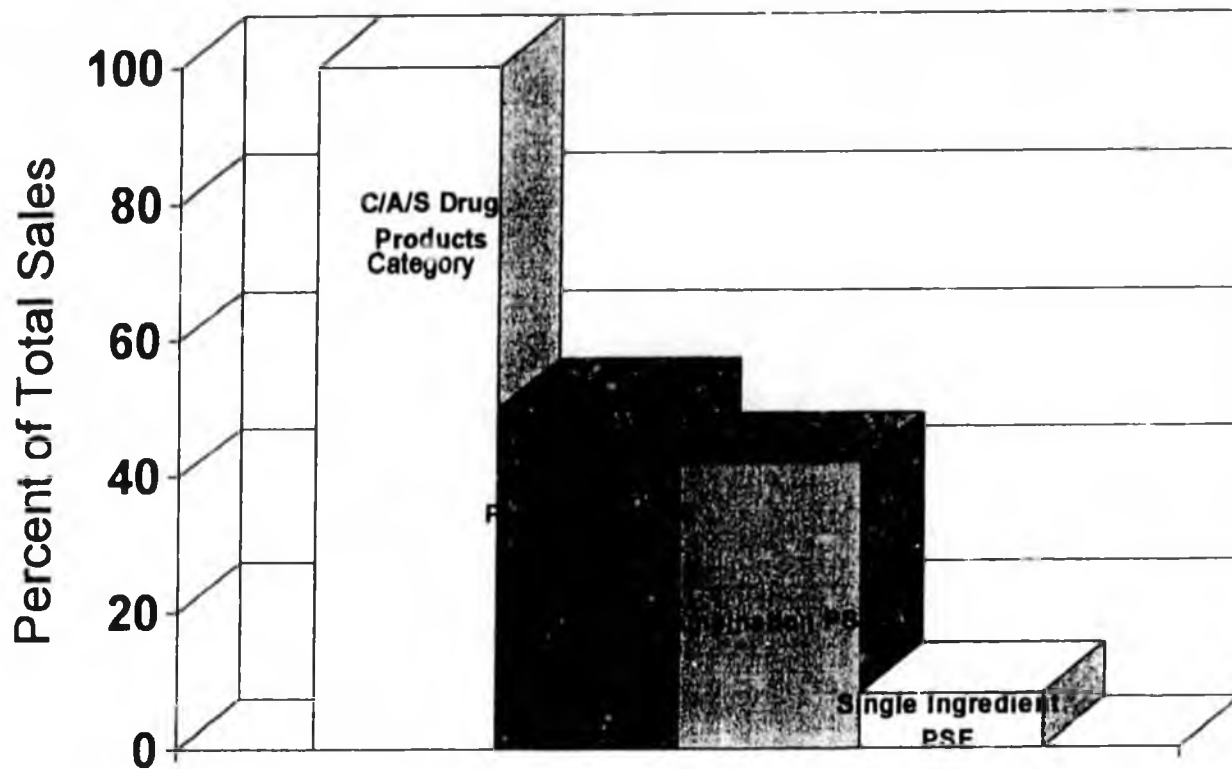
Our sales representatives will work with customers impacted by state regulations to effectively manage inventory on SPHCP products containing PSE. Refer to the SPHCP return goods policy. Any product requires an approved return goods authorization prior to being returned. Specific questions can be directed to the SPHCP Customer Support Department at 1-800-898-8326.

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

Single Ingredient Pseudoephedrine Products are Small Part of Cold/Allergy/Sinus OTC Market but Are Predominant Products Found in Meth Labs



IRI Market Information, January 2005

Combination Pseudoephedrine Products are **not** found in Meth Lab Seizures*

- Eight states thoroughly investigated
 - AZ, CA, GA, IL, NY, OK, TN, TX
- Interviews with local, state, and federal law enforcement officials
- Findings
 - Single ingredient pseudoephedrine products predominantly found in meth labs
 - Combination products in general not found and no Claritin-D products found

*Investigation conducted by national DEA Investigative consulting firm, February 2005

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
Sudafed Tablets 30 MG
Suphedrine Decongenstant
Sudafed 12 Hour
Sudafed 12 Hour Caplets
Suphedrine

Suphedrine 12 Hour Caplets
Sudafed 24 Hour
Suphedrine 12 Hour Caplets
Contac 12 Hour Cold Caplets
Contac 12 Hour Caplets
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
Claritin D Allergy Tabs (X 3 strengths)
Nyquil Cold Medicine (capsules,
gelcaps, liquid)
ND Allergy Congestant
Advil Cold and Sinus
Tylenol Cold Severe Congestion
Aphedrid Tabs
Theraflu Max Strength Nighttime
ND Allergy Congestion Tab 24 Hour
Tylenol Flu Gelcaps
Aphedrid Cold & Allergy Tab
Tylenol Cold ND MS
Theraflu Max Strength Packets
Theraflu Nighttime Flu
Drixoral Cold & Allergy
Advil Cold and Sinus
Tylenol Cold MS Caplet
Aleve Cold and Sinus
Suphedrine MS Tablets
Sudafed Non Drying Sinus
ND Allergy Congestion Tab 24 Hour

Actifed Tablets
Contac Day & Night Cold & Flu
Theraflu Flu Cold & Cough
Flu Cold & Cough Nite Time
Tylenol Sinus ND Severe Congestion
Theraflu Non-Drowsy Flu & Congestion
Sudafed Sinus
Theraflu
Tylenol Allergy Sinus
Alavert Allergy Sinus
Coricidin D Tablet
Tylenol Cold ND Caplet
Alavert Allergy
Tylenol Max STR Sinus
Suphedrine ND Liquid Sinus Caps
Theraflu Cold & Sore Throat
Theraflu Nite Time Flu & Cough
Primatene
Advil Flu & Body Ache
Sudafed Sever Cold & Flu
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



6401 A Street
Anchorage Alaska 99518

Voice: (907)339-7704

Fax: (907)339-7793

FAX

TO: Senator Seekins

FROM: Stenn Peterson

DATE: April 26th

Number of pages including cover sheet 4

Remarks: Urgent For your review Reply ASAP Please Comment



ALASKA STATE LEGISLATURE
SENATOR GRETCHEN GUESS

Sponsor Statement

Senate Bill 149:

"An Act relating to breaches of security involving personal information, consumer report security freezes, consumer credit monitoring, protection of social security numbers, disposal of records, factual declarations of innocence after identity theft, furnishing consumer credit header information, and filing police reports regarding identity theft; amending Rule 60, Alaska Rules of Civil Procedure and providing for an effective date."

The intent of SB 149 is to protect consumers from the growing problem of identity theft and fraud. The measures are designed to secure consumers' private information and ensure consumers will be able to affordably access their credit reports. This problem is growing and consumers must have the tools necessary to fight and prevent identity theft and consumer fraud.

The following are the provisions of the bill.

- **Notification of Security Breaches.** This section requires persons, businesses, and government entities, which collect an individual's nonpublic personal data, to notify consumers when this information may have been compromised.
- **Freeze Access To Reports.** This provision enables consumers to freeze access to their credit report until the consumer releases the information to a specific requestor for a one time or an on-going basis.
- **Protect Credit Header Information.** This provision requires a consumer-reporting agency to restrict who receives credit header information. Credit header information includes the following: Name, Last Known Address, Employer, Mother's Maiden Name, Social Security Number, and Telephone Number.
- **Right to File a Police Report on ID Theft.** This provision would require police in the victim's home jurisdiction to take a report from the victim of identity theft regardless of where the theft occurs.
- **Factual Declaration of Innocence after ID Theft.** This provision allows a victim to petition the court to declare their innocence, and allows the state to create a database of valid claims of identify theft.
- **Affordable Access to Credit Reports.** This provision requires the credit bureaus to provide customers with monthly access to their credit reports for a fee of \$2.00 per report.
- **Protecting Social Security Number.** This section protects an individual's social security number by preventing businesses and the state from using it on paperwork unless required by federal law.
- **Disposal of Records.** This provision requires complete destruction of records, electronic and paper, which contain personal information.

Thank you for your consideration.

AMENDMENT

OFFERED IN THE SENATE
TO: SSSB 149

BY SENATOR GUESS

1 Page 5, line 1:

2 Delete "or (2)"

3

4 Page 5, lines 1 - 2:

5 Delete "within three business days after receiving a request under (a)(3) of this
6 section"

7 Insert "immediately after receiving a request under (a)(2) or (3) of this section"

8

9 Page 5, lines 28 - 29:

10 Delete "within three business days after receiving the request"

11 Insert "immediately after receiving the request by telephone or electronic mail or
12 within three business days after receiving the request by certified mail"

13

14 Page 6, line 31, through page 7, line 1:

15 Delete "within three business days"

16 Insert "immediately"

17

18 Page 8, line 18 - 19:

19 Delete "not later than three business days after receiving your request"

20 Insert "immediately after receiving your request if you make the request by telephone
21 or electronic mail, or within three business days after receiving your request if you make the
22 request by certified mail"

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 19, 2005

SUBJECT: SSSB 149 relating to personal information
(Work Order No. 24-LS0809\Y)

TO: Senator Gretchen Guess
Attn: Meagan

FROM: *TB*
Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Adds a new chapter related to the protection of personal information.

Article 1. Breach of Security Involving Personal Information (secs. 45.48.010 - 45.48.090).

Sec. 45.48.010 requires a person who owns or uses personal information that includes personal information on a state resident to disclose a breach of the information system to the state resident.

Sec. 45.48.020 allows an information collector to delay disclosing the breach of its information system if the Department of Law determines that the disclosure may compromise an investigation.

Sec. 45.48.030 describes the methods that an information collector is to use to disclose the breach of its information system.

Sec. 45.48.040 establishes a limited exception to what is considered a security breach. Relates to employees and agents of the information collector.

Sec. 45.48.050 makes a waiver of Article 1 void and unenforceable.

Sec. 45.48.060 establishes certain rights and remedies that are available for a violation of Article 1.

Sec. 45.48.070 states that an information collector is subject to Article 1 if the information collector has the minimum contacts required by substantive due process for the state to exercise jurisdiction over the information collector.

Sec. 45.48.090 defines terms for Article 1.

Article 2. Consumer Report Security Freeze (secs. 45.48.100 - 45.48.290).

Sec. 45.48.100 allows a consumer to prohibit a consumer reporting agency from releasing the consumer's report or information derived from the report without the consumer's express authorization.

Sec. 45.48.110 describes how the consumer is to make a request for a security freeze and states when the consumer reporting agency is required to place the freeze after receiving the request.

Sec. 45.48.120 requires the consumer reporting agency to send the consumer confirmation of the freeze and a personal identification number or password.

Sec. 45.48.130 requires, if a consumer requests it, that a consumer reporting agency allow access by a third party to a consumer's report or information during a security freeze. Describes how the consumer is to make the request and states when the consumer reporting agency is required to comply. Prohibits an agency from releasing a report or information to a third party during a freeze without the consumer's prior express authorization. Requires an agency to notify a consumer if a third party has attempted to access the consumer's report or information during a security freeze and the purpose is not solely for account review. States that this section does not prevent an agency from telling a third party requesting access that a security freeze is in effect.

Sec. 45.48.140 prohibits a consumer reporting agency from removing a security freeze except under certain identified conditions.

Sec. 45.48.150 prohibits a consumer reporting agency, when dealing with a third party, from suggesting, stating, or implying that a consumer's security freeze reflects a negative credit score, history, report, or rating.

Sec. 45.48.160 prohibits a consumer reporting agency from charging a consumer for taking an action related to the placement of, removal of, or allowing access to a report on which a freeze has been placed. Makes an exception for repeated loss of personal identification numbers or passwords by the consumer.

Sec. 45.48.170 requires a consumer reporting agency to give a consumer the notice described in this section when the agency is required to give a consumer a summary of rights under 15 U.S.C. 1681g of the federal Fair Credit Reporting Act.

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Sec. 45.48.180 requires an agency that violates a security freeze by releasing a report or information to notify the consumer involved and identify the information released and the third party who received the information.

Sec. 45.48.190 establishes the remedies and penalties available for an agency's violation of a security freeze.

Sec. 45.48.200 states that a consumer reporting agency is subject to Article 2 if the agency has the minimum contacts required by substantive due process for the state to exercise jurisdiction over the agency.

Sec. 45.48.210 establishes certain exemptions for Article 2.

Sec. 45.48.220 defines terms for Article 2.

Article 3. Consumer Credit Monitoring (secs. 45.48.300 - 45.48.340).

Sec. 45.48.300 requires a consumer reporting agency, upon request by a consumer, to disclose certain described information, unless the request is covered by the free disclosure provisions of 15 U.S.C. 1681j(a) - (d).

Sec. 45.48.310 describes the information required to be disclosed under the previous section.

Sec. 45.48.320 allows a consumer reporting agency to impose a reasonable charge for making a disclosure under sec. 45.48.300. Sets ceilings on the charge. Requires the agency to disclose the charge before making the disclosure.

Sec. 45.48.330 describes how a consumer may make a disclosure request.

Sec. 45.48.340 states when a consumer reporting agency is to provide the required disclosure.

Article 4. Protection of Social Security Number (secs. 45.48.400 - 45.48.410).

Sec. 45.48.400 establishes certain restrictions on how a person may, without the consent of the individual, use an individual's social security number or require an individual to use the individual's social security number. Prohibits a person from selling, leasing, loaning, trading, renting, or otherwise disclosing an individual's social security number to a third party without the individual's written consent.

Sec. 45.48.410 establishes certain penalties for knowingly violating sec. 45.48.400.

Article 5. Disposal of Records (sec. 45.48.500 - 45.48.590).

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Sec. 45.48.500 requires a business, when (and after) disposing of records containing personal information, to take reasonable measures necessary to protect against unauthorized access to or use of the records.

Sec. 45.48.510 describes what the measures required to be taken under sec. 45.48.500 include.

Sec. 45.48.520 describes what the due diligence required by sec. 45.48.510(3) ordinarily includes.

Sec. 45.48.530 requires a business to comprehensively describe and classify as official policy the policies and procedures relating to the adequate destruction and proper disposal of personal records.

Sec. 45.48.540 establishes a civil penalty for a knowing violation of Article 5.

Sec. 45.48.550 allows an individual damages by a violation of Article 5 to bring a civil action to enjoin further violations and to recover damages, court costs, and attorney fees.

Sec. 45.48.590 defines terms for Article 5.

Article 6. Factual Declaration of Innocence after Identity Theft (secs. 45.48.600 - 45.48.690).

Sec. 45.48.600 allows, in the listed situations, a victim of identity theft to petition the superior court for a determination that the victim is factually innocent of a crime. Also allows the Department of Law to petition for the determination or the superior court to make a determination on its own motion.

Sec. 45.48.610 allows a determination to be heard and made on certain items and information submitted by the parties or ordered by the court.

Sec. 45.48.620 establishes the criteria for a court to determine that a victim is factually innocent of a crime. If met, requires the court to issue an order indicating the determination.

Sec. 45.48.630 authorizes a court, after issuing an order under sec. 45.48.620, to order the victim's information that is contained in court records accessible by the public to be deleted, sealed, or labeled to show that it does not reflect the defendant's identity.

Sec. 45.48.640 allows a court that has issued an order under sec. 45.48.620 to vacate the order under certain circumstances.

Sec. 45.48.650 states that the Supreme Court may develop a form for the order under sec. 45.48.620.

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Sec. 45.48.660 authorizes the Department of Law to establish a data base of individuals who have been victims of identity theft and who have received an order under sec. 45.48.620.

Sec. 45.48.670 authorizes the Department of Law to establish a toll-free telephone number to provide access to information in the data base established under sec. 45.48.660.

Sec. 45.48.690 defines terms for Article 6.

Article 7. Miscellaneous Provisions (secs. 45.48.800 - 45.48.810).

Sec. 45.48.800 prohibits a consumer reporting agency from furnishing a consumer's credit header information to a person unless the person has a permissible purpose under 15 U.S.C. 1681b (Fair Credit Protection Act) to obtain the report. Defines "credit header information."

Sec. 45.48.810 requires a local law enforcement agency with jurisdiction over the individual's actual place of residence to make a report of an individual's identify theft allegations and to provide the individual with a copy.

Article 8. General Provisions (secs. 45.48.900 - 45.48.995).

Sec. 45.48.900 states that a provision of this chapter that is preempted by or conflicts with federal law in a particular situation does not apply to the extent of the preemption or conflict.

Sec. 45.48.990 defines terms for this chapter.

Sec. 45.48.995 titles the chapter the Alaska Personal Information Protection Act.

Section 2. Indicates that a section of the new chapter changes a court rule.

Section 3. Adds a transition provision for Article 4.

If I may be of further assistance, please advise.

TLB:med
05-272.med

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSSSB 149(L&C)
(S) Publish Date: 4/22/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title: "An Act relating to breaches of security involving RDU: CIVIL
personal information; and relating to consumer report..." Component: Commercial & Fair Business
Sponsor: Senator Guess
Requester: Senate Labor and Commerce 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						
-----------------------------	--	--	--	--	--	--

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

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 adds a chapter to AS 45 that imposes disclosure requirements on businesses that collect and store personal information if there is a security breach of the businesses' information system. In the event of a security breach, notice of the breach must be made to consumers by either written or electronic means, with some exceptions if the notice will cost more than \$250,000, or the number of affected consumers exceeds 500,000. Consumers can bring a court action for violations of this law to recover damages and injunctive relief.

Article 2 adds a section that allows consumers to place a security freeze on his or her credit report. When a security freeze is in place, a credit reporting agency may not release information from the consumer's credit report to third parties unless requested by the consumer. There are several exemptions for access required to correct technical information, and for some agencies like the child

Prepared by: Kathryn Daughhete, Director Phone 465-3673
Division: Administrative Services Division Date/Time 4/9/05 2:53 PM
Approved by: Kathryn Daughhete for David Márquez, Attorney General Date 4/9/2005
Agency: Department of Law

FISCAL NOTE # 1

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSSSSB 149(L&C)

ANALYSIS CONTINUATION

support enforcement agency, Department of Health and Social Services, and Department of Revenue. Court action can be brought by consumers to enforce this law. Remedies include injunctive relief, damages (including lost wages and pain and suffering), and punitive damages up to \$5000.

Article 3 adds a section that requires credit reporting agencies to disclose information in a consumer's credit file upon request by the consumer. Article 4 adds a section that prohibits a person from disclosing the social security number of an individual, or requiring a SSN to access an internet site. Article 5 adds a section that requires a business to implement and monitor a system that requires the disposal of all records that contain personal information. Article 6 adds a section that allows a victim of identity theft to petition the superior court for a determination that the victim is factually innocent of the crime in instances where the perpetrator, using the victim's identify, committed a crime. Article 7 adds a section that prohibits disclosure of credit header information, and provides victims the right to file a police report regarding identify theft.

Each of the articles described in this bill are subject to enforcement by individual consumers by bringing court action for damages, injunctive relief, and attorneys' fees and costs. The state is also authorized to bring an action in some circumstances, but is not required to. Passage of this legislation will have no significant fiscal impact on the Department of Law.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSSSSB 149(L&C)
(S) Publish Date: 4/22/05

Revision Date/Time (Note if correction):
Title: Protection of Personal Information
Dept. Affected: Commerce
RDU: Executive Admin and Dev (119)
Component: Administrative Services
Sponsor: Guess
Requester: Labor & Commerce
Component No.: 1028

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						
-----------------------------	--	--	--	--	--	--

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

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						
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 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SSSB 149 establishes requirements to deal with personal information on information systems if a breach of security should occur. This indeterminate fiscal note is submitted because financial impact to the department would occur only if and when a breach occurs. There are approximately 500,000 records in the department's automated systems that store personal information such as: social security numbers, date of birth, etc. For example, there are approximately 126,000 professional licensing records; 175,000 business licensing records; 2,000 investment accounts, and more. Under this bill, all individuals in our information systems would need to be notified if a breach occurs. Additionally, business practices would be changed concerning collection, storage, and transmitting of personal information (relating to the use of SSNs). Significant costs may be generated by adding new security measures to our automated systems. Business practices relating to information collected, stored, and transmitted on paper will also be affected.

Prepared by: JoEllen Hanrahan, Director Phone (907) 465-2505
Division: Administrative Services Date/Time 4/21/05 12:14 PM
Approved by: Edgar Litchford, Commissioner Date 4/21/2005
Agency: Commerce, Community, and Economic Development



Publisher of Consumer Reports

Freeze Identity Thieves Out of Consumers' Credit Files:

Support State Credit Report Security Freeze Laws

Credit card companies, merchants, credit bureaus and other businesses do not adequately safeguard consumers' private financial information, making it relatively easy for thieves to steal this data and use it to take out new credit or to rack up charges on existing accounts. As a result, identity theft is one of the fastest growing financial crimes. Nearly 10 million Americans fall victim each year, and the Identity Theft Resource Center reports that victims spend an average of \$1,495 and 600 hours to restore their credit histories and their good names. Identity theft also costs U.S. businesses nearly \$48 billion annually.

Consumers need additional tools to help prevent identity theft before it happens. Many states are considering legislation that would allow people to lock identity thieves out of their credit files with a security freeze. With a security freeze in place, a consumer's credit report and credit score cannot be shared with any potential creditors unless the consumer decides to unlock the files by contacting the credit bureaus and providing a security code.

A security freeze can help prevent identity theft. Most businesses will not issue new credit or loans to an individual without first reviewing his or her credit report or credit score. If an individual's credit file is frozen and an imposter applies for credit in that individual's name, a creditor likely would deny the imposter's application, preventing an instance of identity theft. In addition, if a request for credit is made on a frozen account, then the credit bureau would be required to notify the consumer about the attempted fraud.

Under a state security freeze law, people who choose to freeze access to their credit report may temporarily lift the freeze for new loans and credit they apply for themselves. When a consumer initially activates the freeze, the credit bureau will issue a unique PIN to the consumer that can be used to "thaw" or lift the security freeze for a particular creditor. Credit bureaus must release the report within three business days of such a request, and are permitted and encouraged to develop faster methods of releasing credit reports on request of the consumer. In addition, existing creditors will continue to have access to an individual's credit report.

State security freeze laws would give consumers the right to decide for themselves whether or not to place a security freeze on their reports.

Frequently Asked Questions

How is a security freeze different from fraud alerts or blocking of information generated by a thief?

A security freeze is a mechanism to prevent identity theft. Only a security freeze allows the consumer to control who has access to his or her credit file. The federal Fair Credit Reporting Act allows identity theft victims to block the reporting of specific information in their credit reports that is the result of identity theft. But fraud blocking is a way to begin to undo damage after it has been done. Fraud blocking does not prevent identity theft. Fraud blocking does not prevent the release of a credit report; it only limits certain fraud-related information from being included in the report after the consumer discovers that information. Similarly, a fraud alert does not prevent a credit report from being issued. Under the federal Fair Credit Reporting Act, when a fraud alert is attached to a credit file, creditors must take additional steps to verify a credit applicant's identity before extending credit. The fraud alert, however, does not prevent the potential creditor from seeing the report, and it does not prevent the credit bureau from selling or sharing the credit report.

A security freeze grants each consumer the right to prevent the credit bureau from issuing his or her credit report for the purpose of issuing new credit. It freezes access to the report except for circumstances such as review of existing accounts, other limited purposes, or the express permission of the consumer.

Would anyone have access to a consumer's credit file if it is frozen?

Yes, these proposed state bills include a few necessary exemptions to the freeze. Security freezes would not apply to any person or entity with which consumers have existing accounts, nor to a limited number of other parties who may access the files for purposes not related to issuing credit, such as law enforcement agencies and certain governmental agencies that need them for investigations and other statutory responsibilities.

Do states have the right to enact security freeze legislation under federal law?

A state law establishing a security freeze right should not be preempted by the federal Fair Credit Reporting Act. No provision of federal law preempts the ability of a state to restrict when a credit reporting agency allows access to a credit report. Federal law addresses the contents of credit files, not who can see them. Federal law also requires credit bureaus, upon the request of a consumer to: (1) put a fraud alert into the consumer's file to warn potential users of the report that new credit should not be extended without first verifying the identity of the credit applicant, and (2) block the reporting of any information in a consumer's file that the consumer identifies as information resulting from an identity theft. States are preempted from imposing requirements regarding the same conduct required by certain specific provisions of federal law, such as these provisions. States are not preempted from other steps to prevent or mitigate identity theft. States should be free to enact security freeze legislation.

Which states already have security freezes?

California, Louisiana, Texas, and Vermont have security freeze laws, the Texas and Vermont statutes are limited to victims of identity theft. The California and Louisiana laws allow consumers who have not been victims of identity theft to control who gets access to their credit files for credit granting purposes.

G:\Groups\Credit & Finance\Gail\Wallat\2005\Security Freeze Factsheetwlogo.doc

IDENTITY THEFT FACT SHEET

Source: FTC's NCPW 2005. Quiz – Identity Theft: When Fact Becomes Fiction

1. ID theft is the fastest growing white-collar crime in the U.S. 27 million Americans have been victims of the crime in the past five years, nearly 10 million people last year.
 2. Identity thieves can get personal information from you by:
 - Stealing your wallet or purse
 - Stealing your mail
 - Rummaging through your trash, and
 - Using personal information they find on the Internet about you.
- For additional information on how ID thieves can steal your identity, go to:
www.consumer.gov/idtheft/understanding_idt.html#2.
3. If you are getting rid of your computer, it is not enough to delete files using mouse and keyboard commands. Use a "wipe" utility program to overwrite the entire hard drive. This makes files unrecoverable.
 4. ID thieves that obtain your personal information can: (1) call your credit card issuer and change the mailing address on your card; (b) open a new credit card account or bank account in your name; (c) file for bankruptcy under your name to avoid paying off debts they've incurred; and (d) counterfeit checks or drain your bank account.
 5. Here are some ways for you to minimize your risk of becoming a victim of ID theft:
 - Don't give out personal information by email, Internet, phone or mail unless you initiated contact and you are certain you know who you are dealing with
 - Don't carry your social security card with you
 - Carry only the identification information and credit/debit cards that you actually need
 - Password protect your credit card, bank and phone accounts.
 - For additional tips, go to: www.consumer.gov/idtheft/protect_againstidt.html#5.
 6. If you are a victim of ID theft, place a fraud alert on your credit report. This will help prevent ID thieves from opening additional accounts in your name.
 7. If you think someone has stolen your personal information or identification, do the following:
 - Immediately close all your credit card or bank accounts
 - Place a fraud alert with any one of the three national consumer reporting companies
 - Contact the Social Security Administration to get a new Social Security number
 - Alert issuing agencies for your driver's license and other identification documents
 8. If you have high speed Internet connection, such as DSL or cable modem, get a firewall program to prevent uninvited guests from accessing your computer.
 9. Signs you could be a victim of ID theft:
 - Fail to receive bills or other mail
 - Receive credit cards for which you did not apply
 - Are denied credit for no apparent reason
 - Get calls or letters from debt collectors or businesses about merchandise or services you didn't buy
 10. Don't tape computer and website passwords to your computer. Safeguard these passwords. Also, when creating passwords, use a combination of letters (upper and lower case), numbers and symbols.

IDENTITY THEFT IN ALASKA

Source: FTC's Consumer Sentinel Complaint Statistics and Trends for Alaska, for the periods: January 1 – December 31, 2004, (pg. 17 of 66) & January 1 – December 31, 2003 (pg. 17 of 66)
<http://www.consumer.gov/sentinel/pubs/Top10Fraud2004.pdf>

Fraud complaints from Alaska consumers:

- 1,143 in 2004
- 1,165 in 2003

Identity theft complaints from Alaska victims:

- 433 in 2004
- 231 in 2003

Ranking ID theft by category from Alaska victims in 2004 – Identity Theft Complaints from Alaska Victims = 433

Rank	Type	# of Victims	Percentage*
1	Credit card fraud	127	29%
2	Phone or utilities fraud	78	18%
3	Bank fraud**	59	14%
4	Gov't documents or benefits fraud	33	8%
5	Employment-related fraud	30	7%
6	Loan fraud	18	4%
	Other	129	30%
	Attempted ID theft	31	7%

* Percentages are based on 433 victims reporting from Alaska. Percentages add to more than 100 because approximately 17% of victims from Alaska reported experiencing more than one type of identity theft.

** Includes fraud involving checking and savings accounts and electronic fund transfers.

Ranking ID theft by category from Alaska victims in 2003 – Identity Theft Complaints from Alaska Victims = 231

Rank	Type	# of Victims	Percentage*
1	Credit card fraud	80	35%
2	Phone or utilities fraud	35	15%
3	Bank fraud**	32	14%
4	Employment-related fraud	23	10%
5	Gov't documents or benefits fraud	17	7%
6	Loan fraud	15	6%
	Other	64	28%
	Attempted ID theft	18	8%

* Percentages are based on 231 victims reporting from Alaska. Percentages add to more than 100 because approximately 17% of victims from Alaska reported experiencing more than one type of identity theft.

** Includes fraud involving checking and savings accounts and electronic fund transfers.

Identity Theft Victim Complaint Data

*Figures and Trends
In Alaska*

January 1- December 31, 2003

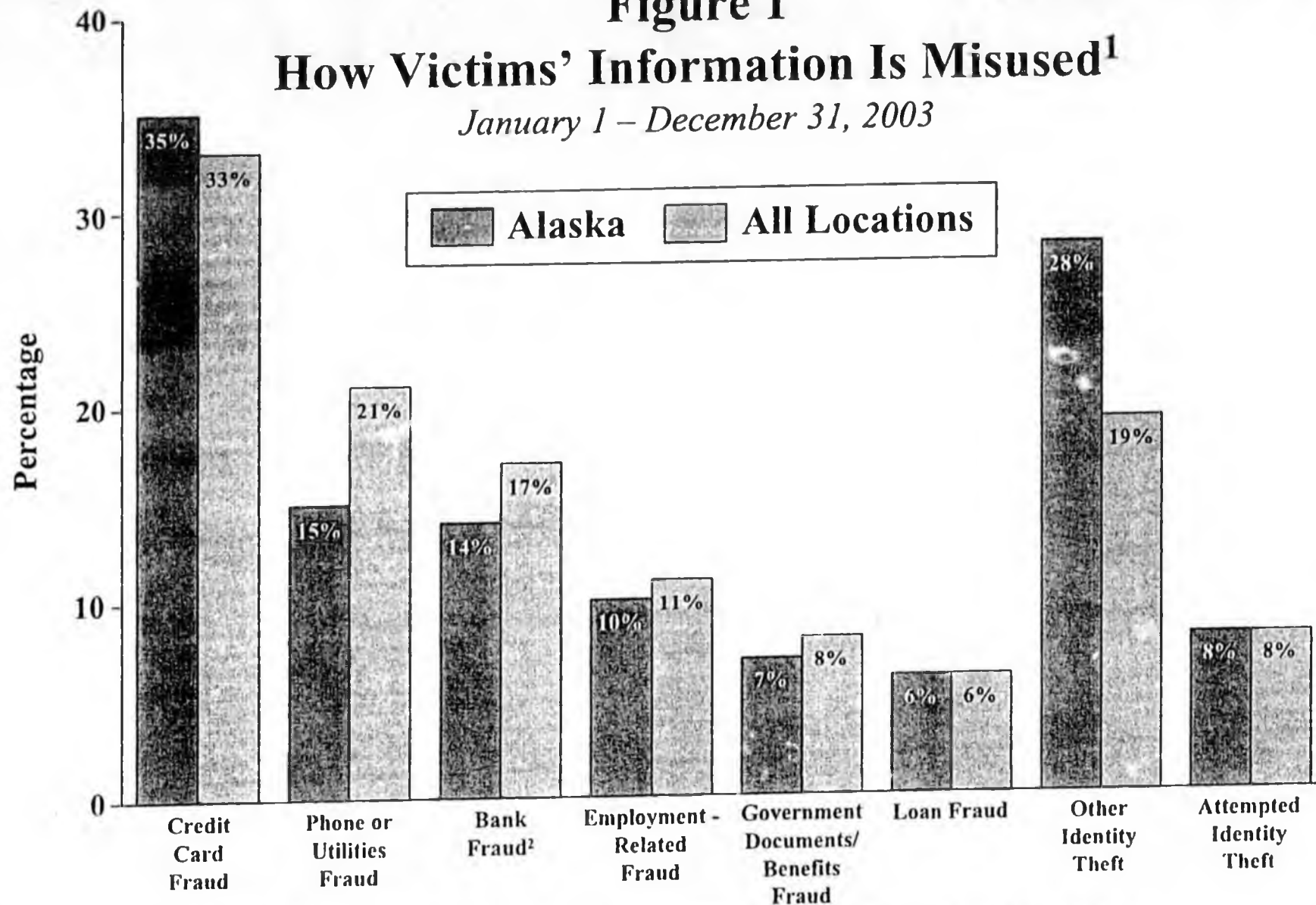


*Federal Trade Commission
Washington, DC*



Figure 1 How Victims' Information Is Misused¹

January 1 – December 31, 2003



¹Percentages are based on the total number of victims reporting: 231 from Alaska and 214,905 from all locations. Percentages add to more than 100 because approximately 17% of victims from Alaska and 19% of victims from all locations reported experiencing more than one type of identity theft. All victims reported experiencing at least one type of identity theft.

²Includes fraud involving checking and saving accounts and electronic fund transfers.

Figure 2



How Victims' Information Is Misused¹

January 1 – December 31, 2003

Total Number of Identity Theft Victims:

Alaska = 231

All Locations = 214,905

Credit Card Fraud

<i>Theft Subtypes</i>	<i>Alaska</i>	<i>All Locations</i>
New Accounts	19.0%	19.2%
Existing Accounts	14.3	12.0
Unspecified	1.3	1.4
Total	35%	33%

Phone or Utilities Fraud

<i>Theft Subtypes</i>	<i>Alaska</i>	<i>All Locations</i>
Wireless - New	5.6%	10.4%
Telephone - New	6.1	5.6
Utilities - New	2.6	3.8
Unauthorized Charges to Existing Accounts	0.9	0.6
Unspecified	0.0	0.8
Total	15%	21%

Bank Fraud²

<i>Theft Subtypes</i>	<i>Alaska</i>	<i>All Locations</i>
Existing Accounts	6.5%	8.2%
Electronic Fund Transfer	4.8	4.8
New Accounts	2.2	3.8
Unspecified	0.4	0.5
Total	14%	17%

Employment-Related Fraud

<i>Theft Subtype</i>	<i>Alaska</i>	<i>All Locations</i>
Employment-Related Fraud	10.0%	11.1%

Government Documents or Benefits Fraud

<i>Theft Subtypes</i>	<i>Alaska</i>	<i>All Locations</i>
Fraudulent Tax Return	2.6%	3.7%
Driver's License Issued / Forged	3.9	2.3
Gov't Benefits Applied For / Received	0.9	1.3
Social Security Card Issued / Forged	0.0	0.4
Other Gov't Documents Issued / Forged	0.0	0.4
Unspecified	0.0	<0.1
Total	7%	8%

Loan Fraud

<i>Theft Subtypes</i>	<i>Alaska</i>	<i>All Locations</i>
Business / Personal / Student Loan	2.1%	2.3%
Auto Loan / Lease	1.7	2.0
Real Estate Loan	2.6	1.0
Unspecified	0.0	0.3
Total	6%	6%

Other Identity Theft

<i>Theft Subtypes</i>	<i>Alaska</i>	<i>All Locations</i>
Other	18.6%	11.6%
Illegal / Criminal	2.6	2.1
Medical	0.9	1.8
Internet / E-Mail	2.2	1.7
Apartment / House Rented	0.4	0.9
Bankruptcy	1.3	0.3
Insurance	0.4	0.3
Property Rental Fraud	0.0	0.2
Child Support	0.4	0.2
Securities / Other Investments	0.4	0.2
Magazines	0.4	0.1
Total	28%	19%

Attempted Identity Theft

<i>Theft Subtype</i>	<i>Alaska</i>	<i>All Locations</i>
Attempted Identity Theft	7.8%	8.0%

¹Percentages are based on the total number of victims reporting: 231 from Alaska and 214,905 from all locations. Percentages add to more than 100 because approximately 17% of victims from Alaska and 19% of victims from all locations reported experiencing more than one type of identity theft. All victims reported experiencing at least one type of identity theft.

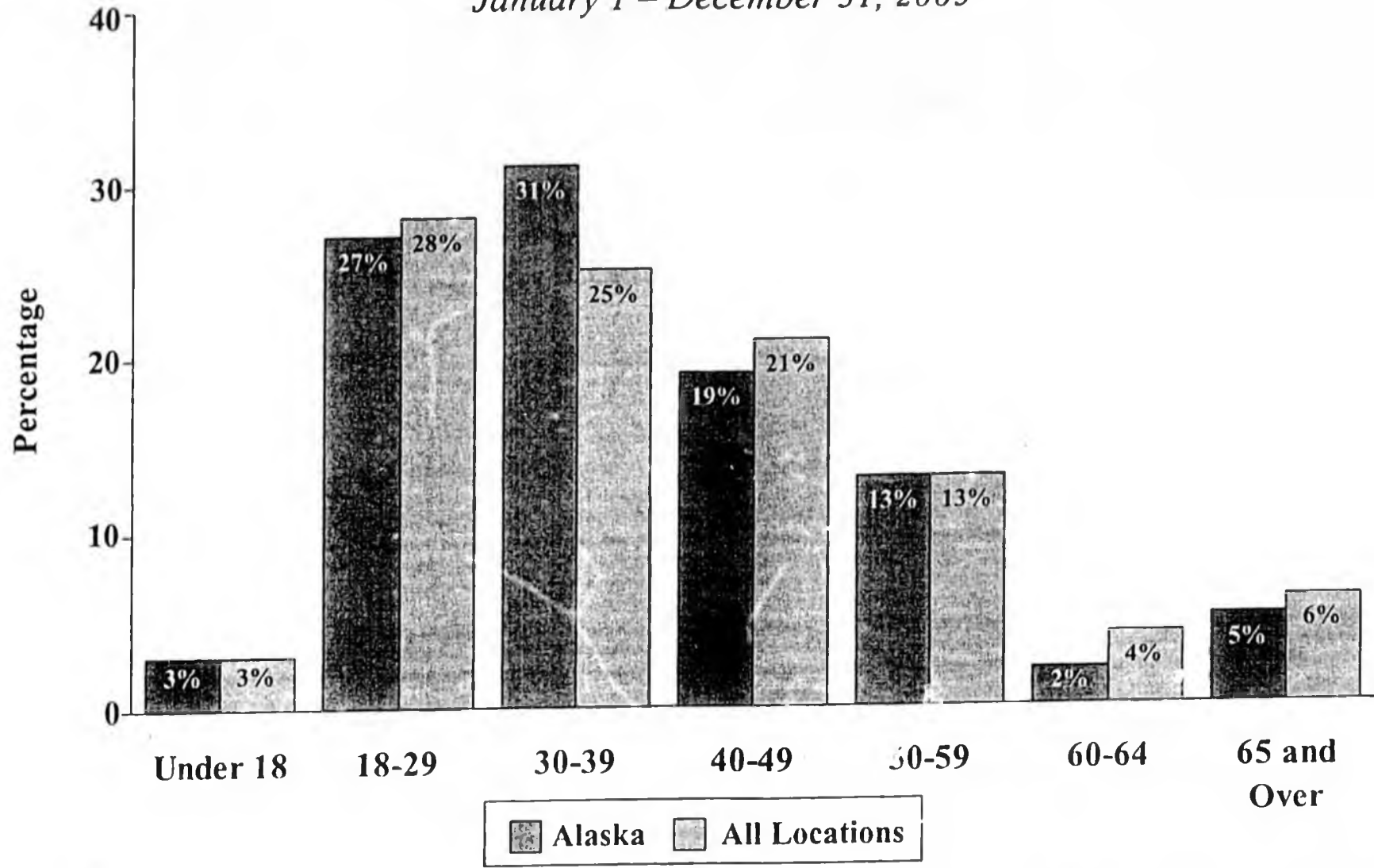
²Includes fraud involving checking and saving accounts and electronic fund transfers



Figure 3

Complaints by Victim Age¹

January 1 – December 31, 2003



¹Percentages are based on the number of victims who provided their age: 231 from Alaska and 197,475 from all locations. This chart represents 96% of victims reporting from Alaska and 95% of victims reporting from all locations who contacted the Federal Trade Commission directly.

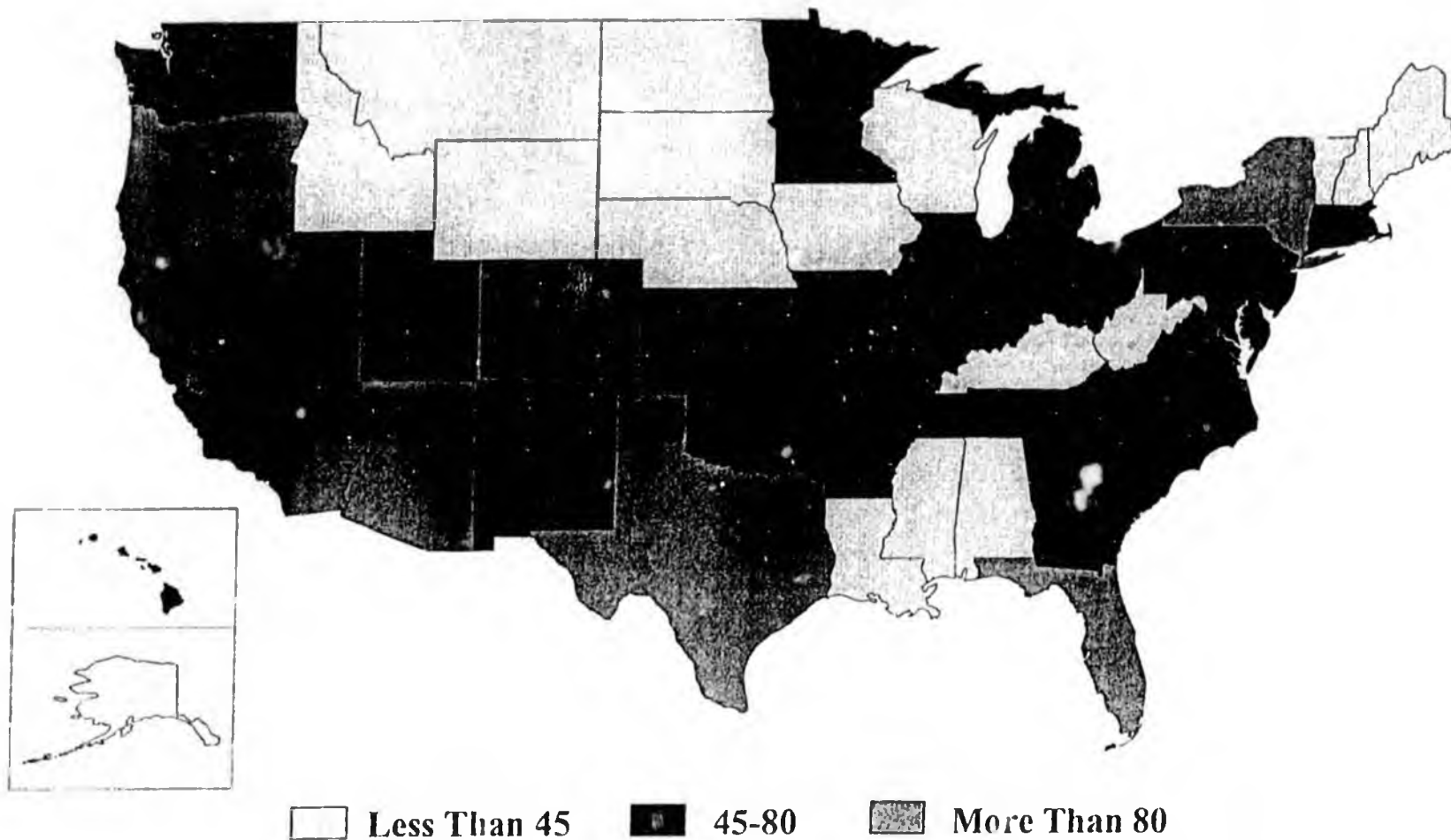
Figure 4a
Identity Theft Victims by State (Per 100,000 Population)¹
January 1 – December 31, 2003

Rank	Victim State	Victims Per 100,000 Population	Number of Victims	Rank	Victim State	Victims Per 100,000 Population	Number of Victims
1	Arizona	122.4	6,832	26	Kansas	50.6	1,378
2	Nevada	113.4	2,541	27	Rhode Island	49.9	537
3	California	111.2	39,452	28	Minnesota	49.7	2,517
4	Texas	93.3	20,634	29	Oklahoma	48.1	1,689
5	Florida	83.0	14,119	30	Ohio	48.0	5,494
6	New York	82.4	15,821	31	Tennessee	47.6	2,782
7	Oregon	81.7	2,909	32	Arkansas	47.5	1,294
8	Colorado	81.3	3,698	33	South Carolina	45.7	1,895
9	Illinois	77.4	9,792	34	Nebraska	44.9	781
10	Washington	77.3	4,741	35	Wisconsin	42.5	2,325
11	Maryland	74.9	4,124	36	Louisiana	41.7	1,875
12	Georgia	70.5	6,127	37	Alabama	40.5	1,823
13	New Mexico	70.3	1,317	38	New Hampshire	38.8	500
14	New Jersey	68.9	5,948	39	Mississippi	37.6	1,084
15	North Carolina	65.9	5,537	40	Idaho	36.1	493
16	Michigan	65.1	6,566	41	Alaska	35.6	231
17	Missouri	61.3	3,496	42	Wyoming	34.3	172
18	Indiana	59.1	3,660	43	Kentucky	32.3	1,332
19	Virginia	58.2	4,297	44	Montana	30.7	282
20	Delaware	57.7	472	45	Iowa	30.6	900
21	Massachusetts	56.5	3,634	46	West Virginia	28.1	508
22	Utah	56.4	1,326	47	Maine	27.0	353
23	Connecticut	54.9	1,913	48	Vermont	25.7	159
24	Pennsylvania	52.9	6,545	49	North Dakota	20.0	127
25	Hawaii	51.6	649	50	South Dakota	19.6	150

¹Per 100,000 unit of population estimates are based on the 2003 U.S. Census population estimates (Table NST-EST2003-01 - Annual Estimates of the Population for the United States and States, and for Puerto Rico: April 1, 2000 to July 1, 2003). Numbers for the District of Columbia are: 917 victims and 162.8 victims per 100,000 population. 97% of the 214,905 total victims reporting indicated their state of residence.

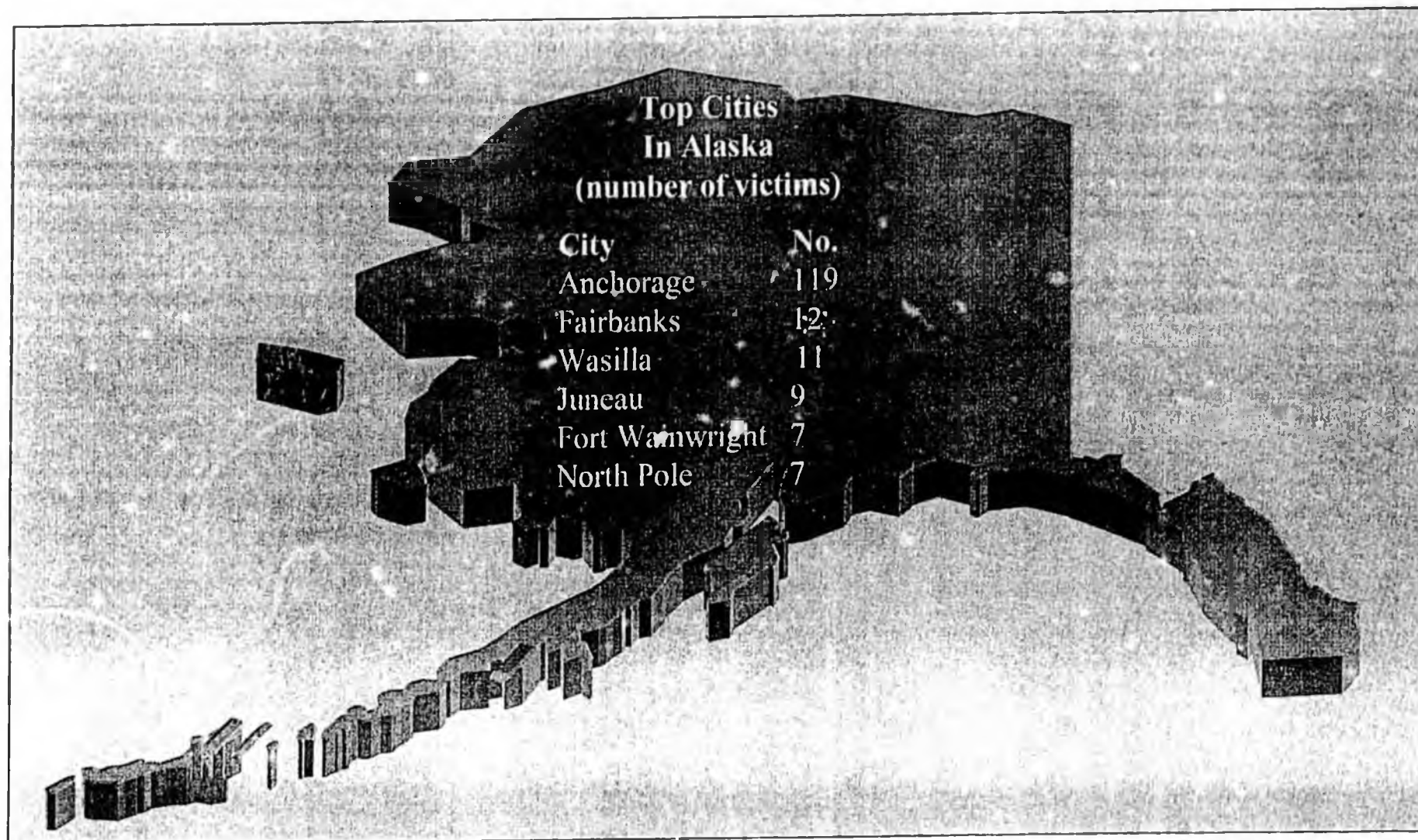


Figure 4b
Identity Theft Victims by State (Per 100,000 Population)¹
January 1 – December 31, 2003



¹Per 100,000 unit of population estimates are based on the 2003 U.S. Census population estimates (Table NST-EST2003-01 - Annual Estimates of the Population for the United States and States, and for Puerto Rico: April 1, 2000 to July 1, 2003). Numbers for the District of Columbia are: 917 victims and 162.8 victims per 100,000 population. 97% of the 214,905 total victims reporting indicated their state of residence.

Figure 5
Top Cities in Alaska¹
January 1 – December 31, 2003



¹99.1% of the 231 victims reporting from Alaska indicated their city of residence.

Fact Sheet 17(g): Criminal Identity Theft

Privacy Right CLEARINGHOUSE

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Privacy Rights Clearinghouse / UCAN and Identity Theft
Resource Center
May 2001. Revised May 2002.

Identity Theft Resource Center
P.O. Box 26833
San Diego, CA 92126
(858) 693-7935
Web: www.idtheftcenter.org
E-mail: itrc@idtheftcenter.org

3100 - 5th Ave., Suite B
San Diego, CA 92103
Voice: (619) 298-3396
Fax: (619) 298-5681
Web: www.privacyrights.org
Contact Us:
www.privacyrights.org/inquiryfor

HOME

Criminal Identity Theft: What to Do if It Happens to You

Note: Congress recently enacted the Fair and Accurate Credit Transactions Act of 2003 (FACTA) into law, which will amend the Fair Credit Reporting Act (FCRA). This law has provisions that apply to Identity Theft. For more information about FACTA, see our Fact Sheet 6(a) *FACTA, the Fair and Accurate Credit Transactions Act: Consumers Win Some, Lose Some* at www.privacyrights.org/fs/fs6a-facta.htm

What is criminal identity theft? Criminal identity theft occurs when an imposter gives another person's name and personal information such as a drivers' license, date of birth, or Social Security number (SSN) to a law enforcement officer during an investigation or upon arrest. Or the imposter may present to law enforcement a counterfeit license containing another person's data.

Frequently, but not always, the imposter fraudulently obtained a driver's license or identification card in the victim's name and provides that identification document to law enforcement. Or the imposter, without showing any photo identification, uses the name of a friend or relative. In many cases, the imposter is cited for a traffic violation or for a misdemeanor violation and is released from the arrest. The imposter signs the citation and promises to appear in court. If the imposter does not appear in court, the magistrate may issue a bench warrant, but the warrant of arrest will be under the victim's name.

The identity theft victim may not know there is a warrant of arrest issued under his/her name. The victim may unexpectedly be detained pursuant to a routine traffic stop and then subsequently arrested and taken to county jail (booked) because of the outstanding bench warrant.

In some cases the imposter will appear in court for the traffic or misdemeanor violation and plead guilty without the victim being aware of this event. In other cases, the imposter is arrested and booked at the county jail for a felony such as a drunk driving or other serious public offense. The imposter provides the victim's name and personal information. This information is then recorded in the countywide data base and is usually transferred to the State's criminal records data base and possibly to the national data bases, the National Crime Information Center (NCIC)

Some identity theft victims, unaware of the earlier criminal activity by the imposter, may learn of the impersonation when the victim is denied employment or terminated from employment. In these cases, the employer conducted a background investigation and had relied upon the criminal history found under the victim's name. Note that the employer is legally obligated to inform the victim of the reason for the rejection of employment. (See Federal Trade Commission information about this requirement at www.ftc.gov/bcp/online/pubs/buspubs/credempl.htm.)

Unfortunately, as with financial identity theft, the burden of clearing one's name within the criminal justice system is primarily on the victim. The victim must act quickly and assertively to minimize the damage. Yet, the responsibility to correct the erroneous data in the various criminal justice computer systems is with the officials working within the criminal justice system. There are no established procedures for clearing one's wrongful criminal record.

This guide. The purpose of this guide is to provide information on the steps you must take to clear your name. Be aware that the procedures to correct the record within the criminal justice data bases are likely to be somewhat different from state to state, and even from jurisdiction to jurisdiction. This publication gives you an outline of steps to take.

Organizing your case. In dealing with the authorities, it is vital that you keep a detailed log of all conversations, including dates, names, phone numbers, and e-mail addresses. Note the time spent and any expenses incurred, as you may some day be able to request restitution for damages from the courts. Confirm conversations in writing, especially ones that directly deal with clearing criminal records. Send correspondence by certified mail, return receipt requested. Keep copies of all letters and documents sent by mail for your files.

If you must correspond by e-mail, ask the recipient to verify receipt of the letter with the original message attached. However, we must remind you that electronic messages are not secure and should be used sparingly. Never send anything by e-mail that you would not want publicly published.

We recommend using our Fact Sheet 17(b), "Organizing Your Case," to help you track your efforts. Web: www.idtheftcenter.org/vg106.shtml. Attorney Mari Frank also offers identity theft prevention and survival tools, (800) 725-0807 (www.identitytheft.org).

Criminal records data bases. When an individual is first "booked" or a warrant of arrest is issued, that person's name is likely to be entered into the county data base and the state's criminal records data base. In California, this system is called the Criminal Identification Index (CII).

In the situation of criminal identity theft, the name and other identifying information such as Social Security number that appear in the data bases are that of the victim. The information is also likely to be entered into the Federal Bureau of Investigation's (FBI) National Crime Information Center (NCIC) data base (www.fbi.gov). Victims of criminal identity theft should assume that information is maintained in local, state, and federal criminal history files.

This presents a problem for the victim. The usual method of query by law enforcement into the various criminal justice data bases is by name, date of birth, and/or drivers' license number. Yet, law enforcement relies on the accuracy of such information for their investigations.

Once the victim's name is recorded on a criminal record data base, it will be unlikely that the victim's name will be totally removed from the official record. Should the imposters' true

identity be determined, the victim should request a "key name" switch within the various criminal justice data bases. This means that the record will reflect the imposter's true name as the *primary* name and the victim's name will appear as an *alias* (aka). Law enforcement insists on this record-keeping system because it reflects more accurately the criminal event. The dilemma for law enforcement - and for the victim -- is when the imposter's identity has not been determined.

The following are general steps you must take to clear your name of the erroneous criminal records attributed to you. Please note that these procedures are likely to vary somewhat from jurisdiction to jurisdiction.

1. What is the first step the victim of criminal identity theft should take? Contact the arresting or citing law enforcement agency -- that is, the police or sheriff's department that originally arrested the person using your identity, or the court agency that issued the warrant for the arrest. Explain that this is a case of misidentification and that someone is using your personal information. Insist that you are the victim.

2a. Working with the arresting law enforcement agency: File an impersonation report. The law enforcement agency should first confirm your identity. This can be done by the police department taking a full set of your fingerprints, your photograph, and copying any photo identification documents such as a driver's license, passport, or U.S. legal presence documents.

Once your identity has been established, the law enforcement agency should retrieve the booking record of the criminal event that you dispute. This will include the booking prints and booking photograph or the citation which may or may not have a thumbprint impression. Request that the law enforcement agency compare the prints and/or photographs to establish your innocence.

Subsequently, the law enforcement agency should recall any warrants and issue a "clearance letter" or certificate of release (if you were arrested/booked) which you will need to keep in your possession at all times. Also, request that the law enforcement agency file with the district attorney's office and/or court of jurisdiction the follow-up investigation establishing your innocence which will entail an amended complaint being issued.

Request that the law enforcement agency change *all* records from your name to the imposter's true identity (*if* the true identity of the imposter is known). Some but not all of the levels that must be cleared include city, county, state, and federal data bases.

2b. Working with the court: You will need to determine the specific law(s) in your state that enable you to clear your name in the court records. In California, this is Penal Code Section 851.8, "Determination of Factual Innocence." Ask if something similar to Penal Code Section 851.8 is appropriate in your situation. A judge or magistrate will be required to make this determination.

The declaration should say that you are factually innocent of charges based upon the follow-up impersonation investigation by the law enforcement agency, or declarations, affidavits, or other material and relevant information. This action will change the name on the arrest records and the warrant of arrest to that of the imposter (if the true identity of the imposter is known). Your name will then be known as an alias of the imposter. The court should be requested to provide written verification for you to carry.

The following is a description of the process you are likely to encounter when working with the court to clear your name of the erroneous criminal records that exist in your name. We recommend that you first file an impersonation report with the law enforcement agency of jurisdiction and allow that agency to conduct their follow-up investigation and submit their

findings to the court. However, depending upon the law enforcement agency's readiness for investigating this type of crime (criminal identity theft) or the county's prescribed protocols, you may need to proceed to the court to expedite this process.

If you discovered that there is an arrest warrant or criminal conviction, you may visit the courthouse in the jurisdiction where the arrest was made to schedule a hearing. The office that you visit within the courthouse will depend on whether the warrant is for a felony or misdemeanor crime and/or traffic violation.

It is best to call the courthouse before making the trip so you can verify the specific office, the hours they are open to the public, and what documentation you need to bring with you. Also, obtain the warrant number and/or case number ("docket") of the court. Most likely you will be asked to bring photo identification documents such as a driver's license, passport, or U.S. legal presence documents.

Tell the clerk there is a docket and/or warrant in your name and you dispute the criminal event that appears in your name. Depending upon the court of jurisdiction's protocols, the clerk may copy your identification documents(s) and obtain other pertinent information from you. You will likely be instructed to have your fingerprints taken, which might be done at the District Attorney's office, sheriff's office, or at the courthouse itself.

Arrangements will be made to schedule an "identity hearing" with the goal of obtaining a determination of factual innocence. At that hearing a judge will examine the evidence, whether it is proof you obtained on your own or subsequent police reports. If the court determines that you indeed are the wrong person named in the case/warrant, you will be issued a certificate that declares your innocence in this case.

For this and any other "certificates of clearance" that you obtain, make several copies. Carry one with you at all times. File another at home in a secure place. Give others to relatives and/or friends who can be contacted in situations where you might have forgotten yours. If you are a California resident, see also step 8 below.

Remember, this whole process can be complex. It involves the arresting agency, the court, and the administrators of the various criminal justice data base systems including the motor vehicle data bases. In the best-case scenario you might be able to completely separate your name from the imposter. In most cases, your name will remain a known alias of the imposter indefinitely.

3. What if the victim of identity theft lives in one county and the criminal event including the arrest warrant, traffic citation, or criminal conviction originated from another county or state? Go to the police or sheriff department in your own jurisdiction or residency and request they take an impersonation report. Obtain a copy of the report and report number. Ask them to take the report under the appropriate Penal Code Section for either identity theft or false personation. You can visit the Federal Trade Commission web site to determine whether your state has enacted an identity theft statute (www.consumer.gov/idtheft).

In California, the law enforcement agency in the victim's own jurisdiction is now required by law (Penal Code Section 530.6) to take an impersonation report. It may begin an investigation or refer the matter to the law enforcement agency where the suspected crime was committed for an investigation of the facts.

In states other than California that might not have a "local jurisdiction" law such as Penal Code 530.6, request your local law enforcement to take a "courtesy report." Mail the report, your fingerprints, your photograph, and any photo identification documents such as a driver's license, passport, or U.S. legal presence documents to the police department in

the jurisdiction where the arrest warrant, traffic citation, or criminal conviction originated. Include any information you may have about the imposter, including but not limited to photograph, physical description, fingerprints, known alias and addresses.

The best method to track and resolve your case is to establish direct communication with the assigned detective or investigator. Ask this person what additional steps you need to go through to obtain a letter of clearance from their agency. Also, consider that you may be requested to sign an affidavit under the penalty of perjury that you did not give any individual permission or authority to use your name, personal identifiers including birth date, driver's license number, and Social Security number. You may also be called to testify in court if the imposter is identified and prosecuted.

You should also ask your local law enforcement agency if it can query your name through various law enforcement data bases (see item number 2a above) to see if there are any outstanding warrants, arrests, traffic violations, or convictions, that you do not yet know about. In some states, this step may be against system policies and/or may be unlawful - California, for example. But in such situations, you can ask law enforcement if they will determine simply if a record exists under the victim's name/identity, even though they may be prohibited from releasing this data to you, the victim.

4. Should the victim contact the Department (Bureau) of Motor Vehicles? Determine if your driver's license has been compromised in your state, or the state where the imposter appears to be committing crimes in your name. Order a certified copy of your drivers' license record for your own review of possible discrepancies. The imposter might have fraudulently obtained a duplicate license under your name and license number but has his/her photograph on the license. Or the imposter may have applied for an original license in a particular state while you live in another state. Ask if your license record can be "flagged" for possible fraud. A directory of DMVs in all 50 states can be found at www.aamva.org, the American Association of Motor Vehicle Administrators.

In California, if you can substantiate that your license number has been used fraudulently, you are entitled to a new license number. Check with your local DMV for their policy and procedures. The California DMV's toll-free fraud assistance phone number is (866) 658-5758. Its e-mail address is difraud@dmv.ca.gov. Its website is www.dmv.ca.gov/consumer/fraud.htm.

5. What if law enforcement determines the victim's innocence but doesn't know the true name of the imposter? In the event that the imposter's true name is not yet known, request the "key name," or primary name, be switched from your name to the name "John Doe" with your name noted as an alias.

6. What if the police agency does not believe that an imposter committed the crimes and arrests the victim? The first step is to ask the police to compare the arrest information - physical description, fingerprints, mug shots - to you. This should help prove your innocence. You may have to establish an alibi for the criminal event committed by the imposter. Check your date book: Can employment records establish your innocence? Do you have any receipts that prove where you were at the time of the criminal event. Is there someone who can vouch for your presence elsewhere? If this fails, you should give serious consideration to hiring a criminal defense attorney.

7. What if no fingerprints were taken by the arresting officer when the imposter was arrested? This often happens, especially with traffic violations and some misdemeanors like shoplifting. If the citation(s) does not contain a thumbprint, the law enforcement agency can compare your handwriting or signature to that of the citation. Or a vehicle records check can establish that you were not the registered owner of the vehicle that was associated with the citation. (Caution: Some imposters have registered vehicles using the victim's name.) Or the traffic officer that issued the citation may be asked to look at a photo

line-up to establish that you were not the person cited.

8. Are there any agencies that might help the victim? In California, Senate Bill 129, passed into law in 2000, established the nation's first Office of Privacy Protection within the State Department of Consumer Affairs. It serves as the central clearinghouse where California consumers can file complaints and seek advice about identity theft and other privacy related issues.

In 2000, the California Legislature passed another law to assist victims of criminal identity theft, AB 1862. This law establishes an Identity Theft Registry within the California Department of Justice as a companion data base to the Criminal Identification Index (CII), discussed above. Bona fide victims of criminal identity theft can register information about their case with this data base. If they are wrongfully arrested for the crimes of their imposter, they can direct the arresting officer to the data base, accessible by a toll-free telephone number. If the victim applies for a job and knows that a background check will be conducted, he/she can instruct the employer to access the registry in order to learn that the applicant is *not* the individual committing the crime(s).

Information about these legislative bills can be found at www.leginfo.ca.gov. You can obtain information about California statutes (the Motor Vehicles Code or the Penal Code, for example) at www.leginfo.ca.gov/calaw.html.

The toll-free number for the California Department of Justice's Identity Theft Registry is (888) 880-0240. The program can also be contacted by e-mail, IEP.CommandCenter@doj.ca.gov. The California Office of Privacy Protection has a guide for registering with the Department of Justice at <http://www.privacy.ca.gov/cover/identitytheft.htm> called *How to Use the California Identity Theft Registry* with applicable forms. Additional information about the Identity Theft Registry can be found at the California Attorney General's web site at www.ag.ca.gov/idtheft/general.htm.

If you are aware of agencies and organizations in other states that provide assistance to victims of criminal identity theft, please contact the Privacy Rights Clearinghouse through our inquiry form at www.privacyrights.org/inquiryform.html.

9. Should the victim hire an attorney? Competent legal counsel can be invaluable in helping you to clear your name. We have talked with several victims who were unable to attract the attention of law enforcement and court personnel *until* an attorney (a criminal defense attorney) contacted them. We have also spoken with victims who have been able to navigate the criminal justice system without legal help. However, it took them considerable time and they felt vulnerable to being arrested for the crimes committed by the imposter.

10. Should the victim change their Social Security number or driver's license number? Not for most situations. Changing your Social Security number may cause more problems than it solves because you start with fresh records. You no longer have a financial history, work history, or even college records. A clean slate is considered negative by most lenders. These records are all linked by your old Social Security number. (See Fact Sheet 17(L), "Should I Change My Social Security Number," at www.idtheftcenter.org/vg113.s.html)

If your driver's license number was used fraudulently by an imposter in a scheme to issue bogus checks to businesses, the license number may have been recorded and flagged by one of the various check cashing verification companies, for example, Telecheck. This may result in your check cashing privileges being denied. In this case, we recommend requesting a new license number. Be sure to contact the appropriate check verification

service to clear the erroneous record.

11. In addition to working with law enforcement and the court system, are there any other steps the victim should take to clear his/her name? Yes. You must contact any information brokers who may have purchased your wrongful criminal records from the courts and/or law enforcement agencies.

Just like consumer reporting agencies compile credit data on consumers for the purpose of selling credit reports, information brokers compile criminal record information on individuals. They sell such information to employment background checkers, private investigators, attorneys, debt collectors, and others. Information brokers purchase such records from courts and law enforcement agencies throughout the country. Your wrongful criminal record is likely to have found its way to one or more of these data bases. The problem is that it may be very difficult to determine which information brokers have obtained the erroneous information and who they may have sold it to.

You should start by asking the court administrator who they sell their data to. Similarly, ask the law enforcement agency who they sell arrest data to, if anyone, and who else might have access to that data. You will want to immediately contact these entities in writing and request that they remove the erroneous information from their records. Also ask them who, if anyone, they have sold the information to, or who else has access to their data base. Do not be surprised if these companies are less than cooperative. If you encounter resistance, you may need to hire an attorney.

The information broker industry is, for all practical purposes, not regulated by federal or state law. There are no *legally-mandated* standards that they must comply with. Their trade association, the Individual Reference Services Group, has established a *voluntary* set of privacy principles (see www.irsq.com) in conjunction with the Federal Trade Commission (www.ftc.gov). Unfortunately, these guidelines do not give victims of criminal identity theft meaningful access to the records about them.

12. What additional considerations should I be aware of regarding employment? You may have learned about your wrongful criminal record from an employer who conducted a background check on you, and who has decided *not* to hire you because of the criminal record that was found. That employer is *obligated* to give you a copy of the report *and* tell you the name of the investigative company that compiled the report. This is a requirement of the federal Fair Credit Reporting Act, discussed in the next section.

Once you have learned the name of the company that conducted the background check, you should contact them and ask which information broker data base(s) they used in compiling the report. Then you must contact those companies to remove the erroneous data. Again, this is a situation in which the assistance of a competent attorney is likely to be invaluable.

If you are a victim of criminal identity theft, and if wrongful criminal records are preventing you from obtaining employment, you might want to request a criminal record clearance search through your state Department of Justice criminal records unit. In California, the fee is \$25. You would fill out an application and submit fingerprints to the California Department of Justice. Your local police department can assist you in preparing a set of prints that is acceptable to the DOJ.

The DOJ then will conduct a criminal records search based on your fingerprints. If no matches are found, you will receive a letter from the DOJ stating that you have no criminal record based upon a fingerprint search. This could assist you in employment situations where wrongful criminal records are a barrier to finding a job. For more information about the California DOJ's criminal records search, visit their web site,

www.ag.ca.gov/ag/publications/directory.pdf. (Look for "Criminal History Records" in the index.) Or call (916) 227-3832. For links to the Attorneys General offices (DOJ) in the 50 states, visit the web site of the National Association of Attorneys General, www.naag.org.

13. Are there any precautions individuals can take to prevent becoming a victim of criminal identity theft? There is no "early detection" system to alert victims of criminal identity theft. However, there are some things that you can do as precautions. Besides ordering your credit history from the three credit bureaus each year, periodically obtain a copy of your driver's license record from your local DMV. Also, order a copy of your Personal Earnings and Benefits Estimate Statement from the Social Security Administration. Information about obtaining these documents can be found in Fact Sheets 17 and 17a at www.privacyrights.org. These fact sheets discuss credit-related identity theft.

Most victims learn of the perils of criminal identity theft by indirect means. These include notice of citation(s) from the courts, collection agency calls, and notice of warrant(s) of arrest. During a routine traffic stop, a police officer might inform the victim that their license was suspended or revoked. Or the victim might be arrested for crimes committed by the imposter.

We know of individuals who have been refused employment because of criminal identity theft. They learned of their wrongful criminal record from information obtained by the employer on the background check. Federal law requires employers to notify job applicants if they have been refused the job because of information on the background check. (For more information about the federal Fair Credit Reporting Act and "consumer investigative reports," see www.ftc.gov/bcp/conline/pubs/buspubs/credempl.htm.)

We have learned of several instances where employers did *not* comply with this law, and left the criminal identity theft victims in the dark about their wrongful criminal records. If you have repeatedly been rejected for employment, you might want to conduct a background check on yourself. There are two ways to do this. First, you could hire an investigative firm that specializes in employment checks to conduct the search. Many such companies can be found in the Yellow Pages under "Investigators." Be sure to check for proper credentials such as a state-issued private investigator license. Ask if the investigator is a member of a professional or trade association. Costs and investigative methods vary, so do some comparative shopping.

In California you can contact the referral services of two professional associations to obtain names of private investigators who specialize in employment background checks: the California Association of Licensed Investigators, at (800) 350-2254, and the California Institute for Professional Investigators, at (800) 400-2474. If you live in another state, find out if there is a private investigators professional association that makes referrals.

For information about private investigative services in other states, visit the web sites of the National Association of Legal Investigators (www.nalionline.org/sponsors_associations.html) and the National Association of Security and Investigative Regulators (www.nasir.org/licensing.htm).

Or second, you can use one of the online information broker services to conduct your own background check. These include: www.privacyscan.com, www.mybackgroundcheck.com, www.ussearch.com, www.uslocate.com, www.whoishe.com, among others. Be aware, however, that professional employment investigators are skilled in conducting background checks. They may be able to find information that you are not able to uncover on your own.

Some additional action steps:

We hope that the above steps will help guide you in dealing with the struggles of criminal identity theft. Remember that the preceding steps to correct the record within the criminal justice system will be different from state to state, and even from county to county. If you become a victim of criminal identity theft, we recommend that you file a complaint with the Federal Trade Commission so they may more accurately monitor such crimes. This may be done online at www.consumer.gov/idtheft.

Please also share your experience with us. We are compiling information from around the country on the steps victims must take to clear their names from wrongful criminal records. This guide has focused on procedures victims must take in California. We want to expand this guide to include information useful to victims in other states. Contact us at www.privacyrights.org/inquiryform.html or itrc@idtheftcenter.org.

You might want to advocate for the improvement of laws regulating employment background checks and the information broker industry. We recommend that the Fair Credit Reporting Act be amended to improve employer disclosure requirements to those whose backgrounds they are investigating. (FCRA, 15 USC sec. 1681, text available at www.ftc.gov) Victims of criminal identity theft should not be left unaware of the reason they are being denied employment. The following are two suggested amendments.

The FCRA should be amended to require that job applicants be given the results of background checks in every instance -- not just when the employer uses the report to make an adverse decision about them. For example, the employer could say that they did not use the results of the background check when making the adverse employment decision, but, rather, that the individual did not have the requisite skills, or that the job pool had other individuals with higher qualifications.

Right now, compliance with the FCRA is only required when the employer hires a third party, such as a private investigative firm, to conduct background checks. For employers who conduct their own investigations, the disclosure requirements of the FCRA do not apply. The laws in many states also contain this loophole. In this day and age of Internet access to public records data and to information brokers, employers can go online and do their own investigations. Several such online information brokers are listed in step 13 above. The FCRA and equivalent state laws should be amended to require that such employers disclose the results of background checks that they perform themselves and provide the source of the information to the job applicants. In California, the Investigative Consumer Reporting Act has been amended to include such requirements (AB 655, 2001 Legislative session, California Civil Code 1786).

For additional information on the problem of criminal identity theft, see the PRC's June 2000 presentation on "The Growing Problem of Wrongful Criminal Records" on its web site at www.privacyrights.org/ar/wcr.htm.

This publication was written by Linda Foley, Director, Identity Theft Resource Center; Beth Givens, Director, Privacy Rights Clearinghouse; and Paul Satkowski, state investigator. The information in this publication is the property of the Identity Theft Resource Center and Privacy Rights Clearinghouse. It is not available for commercial or promotional purposes without permission. Copyright 2001. All rights reserved. Any requests to reproduce this material, other than by individual victims for their own use, should be directed to the authors. Their mailing information is at the beginning of this guide. We thank Paul Johnsen (San Diego County District Attorney's office), Bronti Kelly (victim advocate), and Mari Frank, Esq. for their insights and advice.

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AKPIRG

ALASKA PUBLIC INTEREST RESEARCH GROUP

WWW.AKPIRG.ORG

PO Box 101083 • Anchorage, Alaska 99510-1083 • Ph: (907) 278-3661 • Fax: (907) 278-9300 • email: akpirg@akpirg.org

April 4th, 2005

AkPIRG Statement of Support for:

SB 149: Identity Theft Protections

The Alaska Public Interest Research Group (AkPIRG), an Alaska membership organization dedicated to protecting consumers, urges quick passage of SB 149. This bill is an appropriate response to the ChoicePoint Inc. security breach that occurred in February, and will greatly enhance consumer protection in regard to Identity Theft. Consumers were alarmed to find out that nearly 150,000 people across the nation had their personal information stolen and were at high risk for identity theft. Yet only California had laws on the books that mandated ChoicePoint Inc. to even notify those who fell victim.

The total included some 251 Alaskans. This bill will help better protect those individuals and all Alaskans if and when a similar security breach occurs in the future, and it will protect Alaskans from the increasing array of sophisticated identity thieves.

The bill requires that any business that collects this personal, customer information as part of their business must notify consumers if the security of that information is compromised. This common sense step will make sure that companies like Choicepoint Inc. will disclose when consumers are at risk.

The bill also contains a "security freeze" provision. The three credit reporting agencies - Experian, Equifax and TransUnion - act as consumer financial information clearinghouses. The security freeze provision allows consumers to prevent the clearinghouses from sharing their information. Without access to a consumer's credit report, an identity thief will not be able to open a new account. The provision will allow a consumer to regulate who will receive a copy of their credit report. The security freeze provision allows consumers to use an access code to release their report to a company wishing to extend a line of credit.

SB 149 provides for consumer driven credit monitoring allowing consumers monthly access to their credit reports for a fee of two dollars per month; additional reports would cost eight dollars. It also requires bureaus to provide reports to consumers within twenty-four hours of receiving a request.

The bill will assure better protection of consumers' Social Security Numbers (SSN), which are the gateway to many financial accounts and private information. The widespread use of the SSN's as an identifier makes it relatively easy for thieves to fraudulently use consumers' SSNs to assume their identities and gain access to financial accounts and other sensitive information.

In addition, the bill requires businesses to take reasonable measures to protect against unauthorized access to or use of records containing personal information when disposing of them. In addition, it extends this requirement to any third-party vendors engaged to dispose of such records.

When a consumer has been a victim of an identity theft, he or she is at increased risk for further misuse of his personal information for unlawful purposes. Criminal identity theft occurs when a suspect in a criminal investigation identifies himself or herself using the identity of another, innocent person. As a result, a criminal record is created in the name of an innocent person. In such circumstances, a victim of identity theft must have the right to obtain a factual declaration of innocence from the courts in his or her state, and such declaration should be available through a statewide database that can be used to show others that the victim was not responsible for the crime. This bill provides for that.

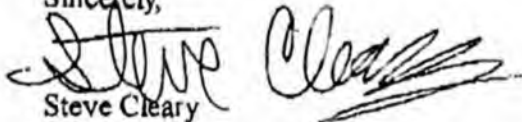
The unrestricted use and sharing of credit header information can put consumers at serious risks if identity theft as well as other harms. This bill closes credit header loopholes by limiting the release of this data only to those individuals who would have a permissible purpose to obtain a consumer's credit report under the federal Fair Credit Reporting Act.

When a consumer suspects that he or she has been the victim of identity theft, his or her most obvious recourse is the local police department. Consumers in Alaska have been frustrated by local law enforcement agents who do not know how to respond to identity theft. Whether the theft has occurred at home or in another community, a consumer should be entitled to file a police report in his or her home jurisdiction and this bill provides for that.

Any company that makes a profit from trading financial and personal information has the responsibility to protect that information. This bill will go a long way to insuring that while also giving Alaskan consumers other needed protections.

SB 149 has strong measures that the Alaska Legislature can enact to better protect consumers. We urge you to pass SB 149.

Sincerely,



Steve Cleary

AkPIRG Executive Director



West Coast Office
1535 Mission St., San Francisco, CA 94103
415-431-6747 (phone) 415-431-0906 (fax)
www.consumersunion.org

April 1, 2005

The Honorable Gretchen Guess
Alaska State Senate
State Capitol, Room 423
Juneau, AK 99801-1182
907-465-2435 (fax)

Re: Support for SB 149, Breaches of Security and Security Freeze for Credit Reports

Dear Senator Guess:

Consumers Union, the independent, nonprofit publisher of *Consumer Reports*, supports SB 149, relating to Breaches of Security and Security Freeze for Credit Reports. A security freeze is a key tool to prevent identity thieves from getting credit in the consumer's name, by allowing consumers to lock up, or "freeze" access to their consumer credit files for credit granting purposes. A requirement to notify consumers of a breach of security will enable consumers to take preventative steps, including placing a security freeze, at a time when they may be able to head off an identity thief before the consumer experiences ruined credit and other harmful consequences of ID theft.

Security freeze

Identity theft is one of the fastest growing financial crimes. According to a 2003 report to the Federal Trade Commission, nearly 10 million Americans fall victim to identity theft annually. The Identity Theft Resource Center reports that victims spend an average of \$1,495 and 600 hours to restore their credit histories and their good names. Other estimates of the amount of time spent by victims vary, but it is clear that an incursion upon a consumer's good name by an identity thief is a troubling and time-consuming experience. A 2003 report to the Federal Trade Commission estimated that identity theft costs U.S. businesses nearly \$48 billion annually and costs U.S. consumers both \$5 billion and 297 million hours annually.

A security freeze will help to prevent the damage from identity theft because businesses are highly unlikely to issue new credit to an individual without first reviewing information from his or her credit report. When an individual freezes his or her credit file, this prevents the imposter from using that credit file to get credit in the consumer's name. Because the potential creditor is highly likely to deny the imposter's credit application if it can't see the frozen credit file, a security freeze can prevent the harm that would otherwise occur from the identity theft.

Under this bill, people who choose to freeze access to their credit files may temporarily lift the freeze for new loans and credit that they apply for themselves. When a consumer initially activates the freeze, the credit bureau will issue a unique PIN to the consumer that can be used to

"thaw" or lift the security freeze for a particular creditor. Credit bureaus must release the report within three business days of such a request.

Federal law is inadequate to prevent identity theft

The credit reporting industry may assert that the federal FACT Act, which revised the federal Fair Credit Reporting Act, gives sufficient protection to consumers. We respectfully disagree. Federal law confers the rights of fraud alerts and blocking. Both partially address an identity theft *after* there has been a theft of identity or of information. Nothing in federal law creates a right in the consumer to stop anyone from seeing the consumer's credit file.

The rights available to consumers under federal law are not as effective as a security freeze. Federal law allows identity theft victims to block from the contents of their credit files specific information that is the result of identity theft. But fraud blocking does not block the furnishing of a credit report. It does not prevent identity theft. Similarly, a fraud alert does not prevent a credit report from being issued. Under the federal Fair Credit Reporting Act, when a fraud alert is attached to a credit file, creditors must take additional steps to verify a credit applicant's identity before extending credit. The fraud alert, however, does not prevent the potential creditor from seeing the report, and it does not prevent the credit bureau from selling or sharing the credit report. Only a security freeze can do this.

Consumers can make a choice weighing the protective value of a security freeze against any inconvenience it may pose

The consumer credit reporting industry may also assert that a security freeze will inconvenience consumers who are shopping for credit, as they will have to lift the freeze with respect to each potential creditor. This is a choice Alaskans will be free to make for themselves if the security freeze bill is enacted. Each consumer can decide if the protection of knowing that only creditors authorized by the consumer can review the file for credit granting purposes outweighs the slight delay in requesting that the freeze be lifted for particular potential creditors. This bill will simply give Alaskans the right to make this choice for themselves.

The consumer reporting industry has made it hard for consumers to learn about and use freezes

Consumer reporting agencies have argued in some state legislatures that not many consumers have used the security freeze in the two states where it is already in effect. In one of those states, the freeze is not available to all consumers, but only to ID theft victims. In the other state, California, the Legislature had to go back and amend the statute to cap the fees for placing a freeze after one consumer reporting agency, Experian, was charging consumers \$60 for a freeze. This kind of pricing would depress initial usage of the freeze tool.

The bill would be stronger if it exempted ID theft victims from the fee to place a security freeze. Many of the states which are considering security freeze legislations are considering providing this important tool to their consumers who have already been victims of ID theft. The California Legislature is considering eliminating its \$10 fee authorization for consumers who have received

a notice of a security breach. While Consumers Union supports the bill in its current form, these changes would strengthen it.

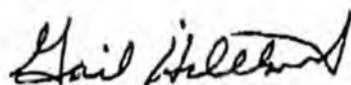
Notice of security breach

The purpose of the required notice is to enable individuals whose information has been accessed by an unauthorized person to take steps to protect their identity, a process that usually entails establishing initial fraud alerts with the three credit bureaus and then checking one's credit report on a regular basis to watch for signs of fraud. If this bill becomes law, Alaskans who receive a notice of security breach could also decide if they wish to take the preventative step of placing a security freeze.

The notice of security breach bill appropriately requires notice to all individuals whose information has been accessed by an unauthorized person. In other states, some opponents of giving notice have argued that notice should be limited to breaches which result in a misuse of information, but this argument is not realistic in light of how ID theft works. An identity thief may steal information from one company and use that information to impersonate a consumer at another company. The company who has the security breach will never be able to ascertain with any certainty whether or not the information has been misused. Further, all stolen information is susceptible to misuse. Indeed, misuse is the usual purpose of the theft of information. Every Alaskan affected by a security breach should get notice, so that the individual can choose to take proactive, preventive steps such as establishing a fraud alert, monitoring his or her credit file and placing a security freeze.

Consumers nationwide learned of the ChoicePoint breach only because one state law required notice of security breaches affecting its residents. Almost daily we hear of new instances of security fraud impacting thousands upon thousands of consumers. Legislation to give consumers control over who can see their consumer credit files through the tool of a security freeze, and to require that companies who have a security breach notify the consumers whose information was accessed is an idea which time has come. For these reasons, Consumers Union supports the passage of this bill.

Very truly yours,



Gail Hillebrand

VIDEO Professor

March 28, 2005

Rep. John Coghill
Alaska State Legislature

Dear Rep. John Coghill,

We read with great interest of, and support your efforts to fight Identity Theft. Our own CEO and founder, John Scherer "The Video Professor" was himself a victim of Identity Theft.

As a result, we've launched a special section on our own website at www.videoprofessor.com with lots of free information about ID Theft for consumers.

But based on our experience with John's case, one can wonder what is worse. The crime itself, or the struggle to fight back with an often-chaotic legal system.

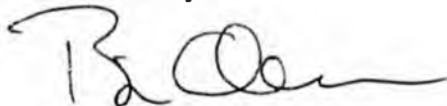
Too often we heard in court, "It's not a violent crime." Violent? No. Vile? Yes!

We applaud your efforts and encourage stronger laws, and even tougher enforcement of these laws.

Identity thieves are predators of the worst kind.

If we can be of assistance to you in our efforts, please do not hesitate to call on us.

Yours truly,



Brian Olson
Director-Marketing Communications
VIDEO PROFESSOR Inc
303-232-1244 Ext 380
bolson@videoprofessor.com



April 26, 2005

The Honorable Ralph Seekins, Chair
Senate Judiciary Committee
Alaska State Capitol, Room 125
Juneau, AK 99801-1182

RE: SB 149 (Guess)--Support

Dear Chair Seekins:

On behalf of the members of AARP in Alaska, we encourage you and your colleagues on the Senate Judiciary Committee to support SB 149, authored by your Committee member Senator Gretchen Guess.

As you know, earlier this year ChoicePoint admitted that it had lost personal information affecting 150,000 customers, including some Alaskans. Although the information was illegally stolen from the company, the company failed to notify their customers at the time they first discovered the information was taken last fall.

SB 149 will mandate that any company that has had its customer financial information stolen must notify those customers that they could be victimized.

SB 149 also requires the three companies that have credit information on all of us to offer security freeze protection. Security freeze protections allow the consumer to determine which companies will be allowed credit information which can be used for lines of credit. This will provide an effective tool to prevent false applications for credit because of stolen information/identity theft.

SB 149 addresses a variety of issues associated with identity theft in a very comprehensive manner. Millions of Americans have been negatively impacted by identity theft that has cost billions of dollars and hundreds of hours clearing up their

records. Even small amounts of losses can be devastating to older citizens who are living on fixed incomes.

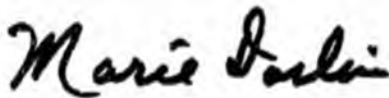
This issue needs to be addressed and SB 149 is one good way to help Alaskans.

We urge an "AYE" vote on SB 149.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,



Marie Darlin, Coordinator
AARP Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
586-3637 (voice)
463-3580 (fax)

CC: Vice-Chair Charlie Huggins
Senator Gen. Therriault
Senator Hollis French
Senator Gretchen Guess



Fax Cover Sheet

Alaska State Office
907.341.2270 fax
907.341.2277 voice
ak@aarp.org

3601 "C" Street,
Suite 1420

Anchorage, AK
99503

TO:	SENATOR RALPH SEEKINS	FROM:	PAT LUBY
COMPANY:	_____	DATE:	_____
FAX NUMBER:	907-465-5241	# PAGES:	_____

AARP is a nonprofit, nonpartisan membership organization dedicated to making life better for people 60 and over. We provide information and resources; engage in legislative, regulatory and legal advocacy; assist members in serving their communities; and offer a wide range of unique benefits, special products, and services for our members. These include *AARP The Magazine*, published bimonthly; *AARP Bulletin*, our monthly newspaper; *Segunda Juventud*, our quarterly newspaper in Spanish; *Live and Learn*, our quarterly newsletter for National Retired Teachers Association members; and our Web site, www.aarp.org. We have staffed offices in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.