

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 2005-2006 2875

1 \* Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to  
2 read:

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

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

24 (2) several hundred adults and children are admitted into treatment each year  
25 in Alaska for marijuana abuse, with more than half being children under 18 years of age ~~and~~  
26 ~~more than a third being Alaska Natives;~~ pregnant women in Alaska use marijuana at a higher delete  
27 rate than the national average ~~and the percentage of pregnant Alaska Native women using~~  
28 ~~marijuana is more than double the national average and the average for non-Native Alaskan~~  
29 ~~women; the percentage of Alaska Native high school youth who have used marijuana is~~  
30 ~~significantly higher than among non-Native youth;~~

31 (3) there is evidence that many users become dependent on marijuana under

1 the clinical standards applied by the Diagnostic and Statistical Manual of Mental Disorders  
 2 IV; studies have shown that use of marijuana and withdrawal from marijuana affect some of  
 3 the same neurochemical processes as known addictive drugs; Marijuana Anonymous chapters  
 4 to treat marijuana addicts exist in a majority of states in the country. This is persuasive  
 5 evidence of marijuana's potential for users becoming dependent on it. Currently, one-third of  
 6 all persons in Alaska treated for drug and alcohol problems are treated for marijuana abuse;

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

11 (5) a high percentage of persons in treatment for alcohol abuse also abuse  
 12 marijuana, ~~particularly among Alaska Natives~~; although the relationship between marijuana  
 13 and alcohol and other drugs is not fully understood, there is a correlative effect that makes it  
 14 more difficult to treat alcoholism when marijuana is also used;

delete

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

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

27 (8) if a parent uses marijuana, their children are four to five times more likely  
 28 to become marijuana users; many high school students report that they have been able to get  
 29 marijuana at home or from a relative; criminal penalties for possession of marijuana in the  
 30 home will deter possession by adults and reduce its availability and accessibility to children;  
 31 studies have shown that criminal penalties for possession of marijuana are effective in

SENATE FINANCE COMMITTEE  
1 / 12 / 2006 COMMITTEE ACTION

Bill Number	HB 149		
Amendment	#4		
Motion	adopt		
<u>Motion by</u>	Hoffman		
<u>Objection by</u>			
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Hoffman	✓		
Senator Olson	✓		
Senator Stedman	✓		
Senator Bunde			✓
Senator Dyson	✓		
Co-Chair Wilken			✓
Co-Chair Green	✓		
<u>Tally</u>			
Yea		5	
Nay		2	
Absent			
<u>MOTION</u>	Pass		

Conceptual

Page 2 line 3 through ~~pg 3~~  
 Section 2. FINDINGS FOR SECS. 7-10 :  
 delete references specific to  
 Alaskan Natives  
 except reference on page 2 line 5

Proof

24-LS0596E

this version  
replaced with  
Final  
Version "D"  
due to drafting  
error in  
sec. title on p. 66

SENATE CS FOR CS FOR HOUSE BILL NO. 149(FIN)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to controlled substances; relating to the crimes of manslaughter,  
2 endangering the welfare of a child, and misconduct involving a controlled substance;  
3 relating to the manufacture of methamphetamine and to the sale, possession, and  
4 delivery of certain substances and precursors used in the manufacture of  
5 methamphetamine; relating to listing certain anabolic steroids as controlled substances;  
6 amending Rule 41, Alaska Rules of Criminal Procedure; and providing for an effective  
7 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 PURPOSE OF SECS. 7 - 10. The purpose of secs. 7 - 10 of this Act is to protect the  
12 health and safety of persons in this state and to provide legislative findings concerning this  
13 Act regarding marijuana and its effects in this state.

1 \* Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to  
2 read:

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4 and Alaska today, and the changes in the patterns of usage of the drug, particularly by young  
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25 in Alaska for marijuana abuse, with more than half being children under 18 years of age;  
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lang. deleted per Amend #4

1 evidence of marijuana's potential for users becoming dependent on it. Currently, one-third of  
 2 all persons in Alaska treated for drug and alcohol problems are treated for marijuana abuse;

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 4 lifelong health and social problems, makes it more likely that the person will later use more  
 5 potent illegal drugs, and is associated with depression and an increased risk of attempting  
 6 suicide;

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

11 (6) marijuana consists of hundreds of different chemicals and can affect  
 12 almost every organ and system in the body, including the lymph system, the heart, and the  
 13 lungs; THC binds to receptors in the brain that should otherwise bind to naturally occurring  
 14 brain chemicals; marijuana can affect memory, attention, judgment, and other cognitive  
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 20 juveniles who commit violent offenses, have marijuana in their system at the time of the  
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23 (8) if a parent uses marijuana, their children are four to five times more likely  
 24 to become marijuana users; many high school students report that they have been able to get  
 25 marijuana at home or from a relative; criminal penalties for possession of marijuana in the  
 26 home will deter possession by adults and reduce its availability and accessibility to children;  
 27 studies have shown that criminal penalties for possession of marijuana are effective in  
 28 increasing the perception among teenagers of the risks of using the drug, thus reducing its use  
 29 by young people;

30 (9) in *Noy v. State*, 83 P.3d 538 (Alaska App. 2003), the Alaska court of  
 31 appeals allowed any person over 17 years of age to possess up to four ounces of marijuana in

lang.  
 deleted  
 per  
 Amend  
 #4

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

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

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

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

14 [OR]

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

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

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

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

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

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

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

31 or

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

3 (3) possesses an immediate precursor of methamphetamine, or the  
4 salts, isomers, or salts of isomers of the immediate precursor of methamphetamine,  
5 with the intent to manufacture any materia<sup>1</sup>, compound, mixture, or preparation that  
6 contains methamphetamine, or its salts, isomers, or salts of isomers; [OR]

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

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

10 or

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (i) retailer or as a wholesaler;

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

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

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

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

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

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

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

1 misconduct involving a controlled substance in the third degree if the person

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

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

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

10 (A) with reckless disregard that the possession occurs

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

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

13 or

14 (B) on a school bus.

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

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

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

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

25 (3) possesses

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

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

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

1 (D) 50 or more tablets, ampules, or syrettes containing a  
2 schedule VA controlled substance;

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

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

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

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

11 (A) with reckless disregard that the possession occurs

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

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

14 or

15 (B) on a school bus;

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

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

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

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

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

1 (10) affixes a false or forged label to a package or other container  
2 containing any controlled substance.

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

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

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

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

15 (3)] possesses

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

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

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

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

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

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

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

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

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

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

8 or

9 (3) [(2)] refuses entry into a premise for an inspection authorized under  
10 AS 17.30.

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

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

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

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

31 (1) boldenone;

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

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

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

1 any 30-day period:

2 (1) ephedrine under AS 11.71.200(4);

3 (2) pseudoephedrine under AS 11.71.200(13);

4 (3) phenylpropanolamine under AS 11.71.200(11).

5 (b) This section does not apply to a person who lawfully purchases or receives

6 (1) more than six grams of a listed chemical identified in (a) of this

7 section

8 (A) that was dispensed to the person under a valid prescription;

9 or

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

12 (i) retailer or as a wholesaler;

13 (ii) wholesale drug distributor licensed by the Board of

14 Pharmacy;

15 (iii) manufacturer of drug products licensed by the

16 Board of Pharmacy;

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

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

19 (2) more than six but less than 24 grams of a listed chemical identified  
20 in (a) of this section in the ordinary course of a legitimate business or nonprofit  
21 organization, or as an employee of a legitimate business or nonprofit organization,  
22 operating a camp, lodge, school, day care center, treatment center, or other organized  
23 group activity, and the location or nature of the activity, or the age of the participants,  
24 makes it impractical for the participants in the activity to obtain medicinal products.

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

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

28 (b) In addition to conditions the court may impose under (a) of this section and  
29 notwithstanding other provisions in this chapter, if the defendant is charged with  
30 manufacturing methamphetamine under AS 11.71.020(a)(2), unless the defendant  
31 proves to the satisfaction of the court that the defendant's only role in the offense was

1 as an aider or abettor and that the defendant did not stand to benefit financially from  
 2 the manufacturing, the court shall require the posting of a minimum of \$250,000 cash  
 3 bond if the defendant has previously been convicted in this or another jurisdiction of  
 4 manufacturing, delivering, or possessing methamphetamine.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 17.30.090. Sale or dispensation of certain listed chemicals: municipal

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

(b) If a product or substance contains ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, or iodine or crystal iodine, a retailer or employee or agent of a retailer may not offer to sell, deliver, dispense, distribute, or in any manner furnish the product or substance unless it is displayed behind a service counter so it is not accessible to the public or is kept in a secure cabinet or storage area not accessible to the public.

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

(d) Nothing in this section limits the authority of a retailer or employee or agent of a retailer regulated by this section to report to a law enforcement agency or officer suspicious purchases of a chemical, product, or substance. A retailer or employee or agent of a retailer is not liable in a civil action for release of information to a law enforcement agency concerning matters related to this section.

(e) It is an affirmative defense to a prosecution under this section that the retailer

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

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

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

must be deleted

(B) making another appropriate determination.

(f) A person who knowingly violates (a), (b), or (c) of this section is guilty of a class A misdemeanor, punishable upon conviction only by a fine in an amount not to exceed \$10,000.

*language deleted per Amend #1*

(g) In this section,

- (1) "agent" has the meaning given in AS 11.71.900;
- (2) "deliver" has the meaning given in AS 11.71.900;
- (3) "dispense" has the meaning given in AS 11.71.900;
- (4) "distribute" has the meaning given in AS 11.71.900;
- (5) "knowingly" has the meaning given in AS 11.81.900(a);
- (6) "retailer" means a person, whether in this state or outside the state,

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

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

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

\* Sec. 20. 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 The property shall remain on the lists or databases for five years after it is determined that the property is fit for use and shall be removed from the lists or databases within

1        three months after the five year period has elapsed. On request, the department  
2        shall give a copy of the list maintained under this section to any person who requests  
3        the list.

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

6                INDIRECT COURT RULE AMENDMENT. Section 13 of this Act has the effect of  
7        amending Rule 41, Alaska Rules of Criminal Procedure, by limiting the type and amount of  
8        bond that can be posted to secure the pretrial release of certain defendants charged with  
9        manufacturing methamphetamine under AS 11.71.020(a)(2).

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

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

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

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

19       \* Sec. 24. This Act takes effect immediately under AS 01.10.070(c).



Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### FAX COVER SHEET

DATE: 12 Jan 2006 TIME: 11:25 am

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 4

FROM: ~~MINDY ROWLAND~~ Robin Paul  
SENATE FINANCE COMMITTEE SECRETARY  
PHONE: 465-4935-2618  
FAX: 465-2187

NOTES: Final Please  
SCS CS HB 149 (FIN)  
24-LS0596/2 Luckhaupt 1/11/06  
plus 2 amendments - attached

Thanks

Mindy

ADOPTED

WORK DRAFT

WORK DRAFT

WORK DRAFT

24-LS0596Z

Luckhaupt

1/11/06

SENATE CS FOR CS FOR HOUSE BILL NO. 149(FIN)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE 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; relating to the crimes of manslaughter,  
2 endangering the welfare of a child, and misconduct involving a controlled substance;  
3 relating to the manufacture of methamphetamine and to the sale, possession, and  
4 delivery of certain substances and precursors used in the manufacture of  
5 methamphetamine; relating to listing certain anabolic steroids as controlled substances;  
6 amending Rule 41, Alaska Rules of Criminal Procedure; and providing for an effective  
7 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 PURPOSE OF SECS. 7 - 10. The purpose of secs. 7 - 10 of this Act is to protect the  
12 health and safety of persons in this state and to provide legislative findings concerning this  
13 Act regarding marijuana and its effects in this state.

1 \* Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to  
2 read:

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

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

24 (2) several hundred adults and children are admitted into treatment each year  
25 in Alaska for marijuana abuse, with more than half being children under 18 years of age and  
26 more than a third being Alaska Natives; pregnant women in Alaska use marijuana at a higher  
27 rate than the national average and the percentage of pregnant Alaska Native women using  
28 marijuana is more than double the national average and the average for non-Native Alaskan  
29 women; the percentage of Alaska Native high school youth who have used marijuana is  
30 significantly higher than among non-Native youth;

31 (3) there is evidence that many users become dependent on marijuana under

1 the clinical standards applied by the Diagnostic and Statistical Manual of Mental Disorders  
2 IV; studies have shown that use of marijuana and withdrawal from marijuana affect some of  
3 the same neurochemical processes as known addictive drugs; Marijuana Anonymous chapters  
4 to treat marijuana addicts exist in a majority of states in the country. This is persuasive  
5 evidence of marijuana's potential for users becoming dependent on it. Currently, one-third of  
6 all persons in Alaska treated for drug and alcohol problems are treated for marijuana abuse;

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

11 (5) a high percentage of persons in treatment for alcohol abuse also abuse  
12 marijuana, particularly among Alaska Natives; although the relationship between marijuana  
13 and alcohol and other drugs is not fully understood, there is a correlative effect that makes it  
14 more difficult to treat alcoholism when marijuana is also used;

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

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

27 (8) if a parent uses marijuana, their children are four to five times more likely  
28 to become marijuana users; many high school students report that they have been able to get  
29 marijuana at home or from a relative; criminal penalties for possession of marijuana in the  
30 home will deter possession by adults and reduce its availability and accessibility to children;  
31 studies have shown that criminal penalties for possession of marijuana are effective in

1 increasing the perception among teenagers of the risks of using the drug, thus reducing its use  
2 by young people;

3 (9) in *Noy v. State*, 83 P.3d 538 (Alaska App. 2003), the Alaska court of  
4 appeals allowed any person over 17 years of age to possess up to four ounces of marijuana in  
5 their home; at the same time, the court held that possession of four ounces could legitimately  
6 be prohibited even in the home because it was reasonable for the legislature to conclude in  
7 1982 that possession of four ounces is indicative of an intent to sell; the street value of  
8 marijuana today is between \$350 and \$550 per ounce; the legislature heard evidence that  
9 possession of four ounces or more indicates an intent to distribute; and therefore this is the  
10 appropriate amount to justify a felony offense; the *Noy* decision also led the same court in  
11 *Crocker v. State*, 97 P.3d 93 (Alaska App. 2004) to invalidate search warrants for commercial  
12 marijuana-growing and, in the words of the dissenting chief judge, make it "difficult for the  
13 state to enforce legitimate laws prohibiting the sale and possession of marijuana."

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

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

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

18 [OR]

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

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

26 \* Sec. 4. AS 11.71.020(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 second degree if the person

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

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

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

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

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

14 or

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

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

19 (6) under circumstances not proscribed under AS 11.71.010(a)(2),  
20 delivers

21 (A) an immediate precursor of methamphetamine, or the  
22 salts, isomers, or salts of isomers of the immediate precursor of  
23 methamphetamine, to another person with reckless disregard that the  
24 precursor will be used to manufacture any material, compound, mixture,  
25 or preparation that contains methamphetamine, or its salts, isomers, or  
26 salts of isomers; or

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

30 (i) methamphetamine, or its salts, isomers, or salts of  
31 isomers;

1 (ii) an immediate precursor of methamphetamine, or  
2 its salts, isomers, or salts of isomers; or

3 (iii) methamphetamine or its salts, isomers, or salts  
4 of isomers in an organic solution.

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

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

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

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

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

20 (i) retailer or as a wholesaler;

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

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

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

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

27 (2) less than 24 grams of ephedrine, pseudoephedrine,  
28 phenylpropanolamine, or the salts, isomers, or salts of isomers of those chemicals,  
29 kept in a locked storage area on the premises of a legitimate business or nonprofit  
30 organization operating a camp, lodge, school, day care center, treatment center, or  
31 other organized group activity, and the location or nature of the activity, or the age of

1 the participants, makes it impractical for the participants in the activity to obtain  
2 medicinal products.

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

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

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

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

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

14 (A) with reckless disregard that the possession occurs

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

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

17 or

18 (B) on a school bus.

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

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

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

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

29 (3) possesses

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

31 (B) 25 or more tablets, ampules, or syrettes containing a

1 schedule IIIA or IVA controlled substance;

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

5 (D) 50 or more tablets, ampules, or syrettes containing a  
6 schedule VA controlled substance;

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

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

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

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

15 (A) with reckless disregard that the possession occurs

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

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

18 or

19 (B) on a school bus;

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

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

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

31 (8) knowingly furnishes false or fraudulent information in or omits

1 material information from any application, report, record, or other document required  
2 to be kept or filed under AS 17.30;

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

5 (10) affixes a false or forged label to a package or other container  
6 containing any controlled substance.

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

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

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

14 (2) manufactures or delivers, or possesses with the intent to  
15 manufacture or deliver, one or more preparations, compounds, mixtures, or substances  
16 of an aggregate weight of less than one-half ounce containing a schedule VIA  
17 controlled substance, for remuneration;

18 (3) possesses

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

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

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

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

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

1 (4) fails to make, keep, or furnish any record, notification, order form,  
2 statement, invoice, or information required under AS 17.30.

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

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

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

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

11 or

12 (3) [(2)] refuses entry into a premise for an inspection authorized under  
13 AS 17.30.

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

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

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

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

1 for that administration, unless a person prescribes, dispenses, or distributes that type of  
2 anabolic steroid for human use; "anabolic steroids" includes the following:

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

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

31 **Sec. 11.71.210. Purchase or receipt of restricted amounts of certain listed**

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

5 (1) ephedrine under AS 11.71.200(4);

6 (2) pseudoephedrine under AS 11.71.200(13);

7 (3) phenylpropanolamine under AS 11.71.200(11).

8 (b) This section does not apply to a person who lawfully purchases or receives

9 (1) more than six grams of a listed chemical identified in (a) of this  
10 section

11 (A) that was dispensed to the person under a valid prescription;

12 or

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

15 (i) retailer or as a wholesaler;

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

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

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

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

22 (2) more than six but less than 24 grams of a listed chemical identified  
23 in (a) of this section in the ordinary course of a legitimate business or nonprofit  
24 organization, or as an employee of a legitimate business or nonprofit organization,  
25 operating a camp, lodge, school, day care center, treatment center, or other organized  
26 group activity, and the location or nature of the activity, or the age of the participants,  
27 makes it impractical for the participants in the activity to obtain medicinal products.

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

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

31 (b) In addition to conditions the court may impose under (a) of this section and

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

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

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

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

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

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

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

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

31 (ii) in the course of manufacturing or in preparation

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for manufacturing, the defendant obtained the assistance of one or more children under 18 years of age or one or more children were present:

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

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

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

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

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

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

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

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

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

(ii) in the course of an attempt to manufacture, the

1 defendant obtained the assistance of one or more children under 18  
2 years of age or one or more children were present:

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

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

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

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

18 (1) "permanent or temporary residence" means a permanent structure  
19 adopted for overnight accommodation; "permanent or temporary residence" does not  
20 include

21 (A) vehicles, tents, prisons or other correctional facilities,  
22 residential treatment facilities, or shelters operated by a charitable organization  
23 or a government agency;

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

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

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

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

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

4 **Sec. 17.30.090. Sale or dispensation of certain listed chemicals; municipal**  
5 **ordinances.** (a) If a product or substance contains ephedrine, pseudoephedrine, or  
6 phenylpropanolamine, or their salts, isomers, or salts of isomers, or iodine or crystal  
7 iodine, a retailer or employee or agent of a retailer may not sell, deliver, dispense,  
8 distribute, or in any manner furnish the product or substance to a person unless the  
9 retailer or employee or agent of the retailer confirms the identity of the person by  
10 current and valid government-issued photo identification.

11 (b) If a product or substance contains ephedrine, pseudoephedrine, or  
12 phenylpropanolamine, or their salts, isomers, or salts of isomers, or iodine or crystal  
13 iodine, a retailer or employee or agent of a retailer may not offer to sell, deliver,  
14 dispense, distribute, or in any manner furnish the product or substance unless it is  
15 displayed behind a service counter so it is not accessible to the public or is kept in a  
16 secure cabinet or storage area not accessible to the public.

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

22 (d) Nothing in this section limits the authority of a retailer or employee or  
23 agent of a retailer regulated by this section to report to a law enforcement agency or  
24 officer suspicious purchases of a chemical, product, or substance. A retailer or  
25 employee or agent of a retailer is not liable in a civil action for release of information  
26 to a law enforcement agency concerning matters related to this section.

27 (e) It is an affirmative defense to a prosecution under this section that the  
28 retailer

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

31 (2) determined that the employees and agents of the retailer had been

1 notified of the requirements of this section by

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

4 (B) making another appropriate determination.

5 (f) A person who knowingly violates (a), (b), or (c) of this section is guilty of  
6 a class A misdemeanor, punishable upon conviction only by a fine in an amount not to  
7 exceed \$10,000.

8 (g) Notwithstanding another provision of law, a municipality may not  
9 enact or enforce an ordinance that is inconsistent with this section.

10 (h) In this section,

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

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

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

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

15 (5) "knowingly" has the meaning given in AS 11.81.900(a);

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

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

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

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

28 (b) The department shall maintain a list of properties for which the department  
29 has received notice under AS 46.03.500(e). When the department determines under (a)  
30 of this section that a property on the list is fit for use, the department shall note on the  
31 list maintained on its Internet website under AS 46.03.500(f), and on any other

1 list or database it maintains related to illegal drug manufacturing sites, that the  
2 property is fit for use [REMOVE THE PROPERTY FROM THE LIST] and shall  
3 notify the owner of the property that the property is fit for use. The property shall  
4 remain on the lists or databases for five years after it is determined that the  
5 property is fit for use and shall be removed from the lists or databases within  
6 three months after the five year period has elapsed. On request, the department  
7 shall give a copy of the list maintained under this section to any person who requests  
8 the list.

9 \* Sec. 21. AS 11.71.050(a)(2) is repealed.

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

12 INDIRECT COURT RULE AMENDMENT. Section 13 of this Act has the effect of  
13 amending Rule 41, Alaska Rules of Criminal Procedure, by limiting the type and amount of  
14 bond that can be posted to secure the pretrial release of certain defendants charged with  
15 manufacturing methamphetamine under AS 11.71.020(a)(2).

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

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

21 \* Sec. 24. The uncodified law of the State of Alaska is amended by adding a new section to  
22 read:

23 APPLICABILITY. Sections 1 - 18 and 21 - 23 of this Act apply to offenses committed  
24 on or after the effective date of this Act.

25 \* Sec. 25. This Act takes effect immediately under AS 01.10.070(c).

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

**Tourism & Trade**

**House State Affairs**

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# Alaska State Legislature



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**House District 10**

## House of Representatives

### Sponsor Statement

#### HB 149

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

The purpose of HB 149 is to address this highly addictive, central nervous system stimulant. HB 149 will make it a crime to possess or deliver substances in quantities that are used to manufacture methamphetamine. The bill will require a person acquiring sole ingredient drugs containing ephedrine, pseudoephedrine, or phenylpropanolamine, as well as those purchasing iodine or iodine crystals, to show a photo ID. Any business distributing these chemicals will have to keep logs relating to the sale of these substances, 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. Additionally, this bill includes language to further restrict the use of certain anabolic steroids by making them a schedule VA controlled substance.

HB 149 also addresses protecting Alaska's children by increasing the sentencing time for manufacturing methamphetamine where a minor is present. Furthermore, HB 149 will make it harder for repeat offenders who manufacture methamphetamines to get out on bail, by increasing the bond to a minimum cash bond of \$250,000.

Finally, this bill will assist realtors and homebuyers by increasing the information the DEC shall keep on its web site concerning drug-contaminated properties.

\*\*\*\*\*

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

Tourism & Trade

House State Affairs

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# Alaska State Legislature



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House District 10

## House of Representatives Sectional Summary

### Senate CS for CS for House Bill No. 149(JUD)

"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.** 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.

**Section 2.** 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 3.** 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.

**Section 4.** Technical amendment.

**Section 5.** Makes anabolic steroids a schedule VA controlled substance.

**Section 6.** 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 7.** 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.

**Section 8.** 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.

**Section 9.** 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.

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

**Section 12.** States that the Department of Conservation shall maintain a list on their Internet website of all properties that were an illegal drug-manufacturing site and the information that is to be maintained on that list.

**Section 13.** 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 and shall stay on the website for five years after being found fit for use.

**Section 14.** 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 15.** States that Sections 1 – 11 and 15 of this Act apply to offenses committed on or after the effective date of this Act.

**Section 16.** States that AS 17.30.090 is repealed

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

**Section 18.** States that section 17 of this Act takes effect June 30, 2007.



NATIONAL ASSOCIATION OF  
CHAIN DRUG STORES

April 28, 2005

The Honorable Senator Ralph Seekins  
Chair, Senate Judiciary Committee  
Alaska State Capitol, Room 125  
Juneau, AK 99811

413 North Lee Street  
P.O. Box 1417-D49  
Alexandria, Virginia  
22313-1480

Dear Senator Seekins:

On behalf of its members operating approximately 45 chain pharmacies in the State of Alaska, the National Association of Chain Drug Stores (NACDS) thanks you for the opportunity to submit written comments on the proposed combined legislation under House Bill 149.

We appreciate the efforts put into to this incredible piece of compromise legislation. It is very clear from this morning's hearing, and reading through the available documentation that a great deal of hard work has gone into the bill that is now before your committee.

I apologize for not being able to testify at your hearing this evening, but a previous commitment stands in the way.

(703) 549-3001  
Fax (703) 836-4869  
[www.nacds.org](http://www.nacds.org)

Although I have not seen a copy of version M, in reading through the Sectional Summary prepared by Representative Ramras' office, there are only two areas in which our members have concerns.

The log keeping requirements are onerous on retailers from both the point of collecting the information and having to store the information once it's collected. Retailer's collection methods will range from spiral bound notebooks to electronic records depending on the technology available to the individual retailer.

It is our experience from other states that have log keeping requirements enacted, that the logs are not checked by law enforcement, nor is there a centralized data base in place that would allow law enforcement to utilize the information to be on top of the meth manufacturers.

Our first request would be that log keeping be made into a study to assess what is working, and not working, in other states before requiring retailers and community pharmacists to have to go to the expense of setting up and maintaining these logs.

If that request is totally unacceptable, we would ask that there be a provision in the bill that allows for flexibility in log keeping, which would include electronic or written.

In addition, we would ask that in lieu of the two sections (in version D section 11, subsections e and f) that the language be stricken regarding municipal ordinances and local reporting requirements. Instead we would ask you to consider language in the same section in subsection (b) that would allow "The Department of Public Safety and other primary law enforcement officers ..." This would allow what ever branch of law enforcement is in charge in a particular area to have access to the logs. It would also be more helpful to law enforcement to have this information in a centralized data base so they could track those folks who are shopping at multiple outlets, or as you heard earlier today from Representative Ramras, "smurfing."

We applaud the increased penalties for meth manufacturing, especially in the presence of children, the increase in bail that will keep them off the street a little bit longer, and the possession limit of nine grams as prima facie evidence.

Again, we thank you, Senator Guess and Representative Ramras for all the hard work that has gone into this legislation. If I can answer any questions during tonight's hearing I may be able to be reached at (360) 480-6990.

Sincerely,



Lis Houchen  
NW Regional Director, State Government Affairs.  
130 18<sup>th</sup> Avenue SE  
Olympia, WA 98501  
(360) 236-1246  
(360) 480-6990 cell

cc: Cathy Polley, Vice President State Government Affairs, NACDS  
Caren Robinson, Alaska State Pharmacists Association



6401 A Street • Anchorage, Alaska 99518

Re:  
Rep. Ramras  
bill

April 26, 2005

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 addition 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

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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. (2)

(AS 17.30.1090(b)): This provision makes violation of the above-mentioned recordskeeping 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 Seekins

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.

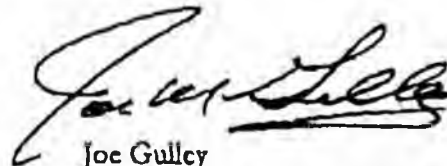
Finally, we incorporate by reference our comments regarding Section 11 of HB 149, regarding the general criminal penalty provisions of this bill, and recommend that the section be modified to clarify that retailers (and their employees) be expressly exempted from such provision, or at a minimum, that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



## NATIONAL CONSUMERS LEAGUE

1701 K Street, NW, Suite 1200, Washington, DC 20006

PHONE (202) 835-3323 FAX (202) 835-0747 [www.nclnet.org](http://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, 2005

By Electronic Mail

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

Re: House Bill 149 – Proposed Amendments

Dear Representative McGuire,

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

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

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

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

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

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

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

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

*(1) Sales in packages containing not more than a total of three grams of pseudoephedrine base, ephedrine base or phenylpropanolamine base;*

*(2) Sales in blister packs, each blister containing not more than two dosage units, or when the use of blister packs is technically infeasible, sales in unit dose packets or pouches.*

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

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

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

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

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

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

Sincerely,

Libby Dannenberg  
State Relations Counsel

**Douglas Owen**

---

**From:** Robert Larango [nofire@alaska.net]  
**Sent:** Wednesday, February 16, 2005 11:30 AM  
**To:** Rep. Jay Ramras  
**Cc:** Rep. David Guttanberg; 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 8 hours of my time. We can't sell more than 3 gram packages, or more 9 grams in 30 days to any one customer. These transactions can only be done on a face to face basis. We are required to ID any unknown customers, and required to notify the DEA of suspicious buyers. We are also required to keep a log of sales. If we violate this or the many other requirements we are subject to loss of our number and very large federal fines.

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

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

Ann Hensler (202) 307-4670

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

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

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

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

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

Sincerely,  
 Robert Larango  
 452-5353

2/16/2005

**Douglas Owen**

---

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

Dear Representative Ramras,

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

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

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

Sincerely,

Lisa Harbo  
820 Capricorn Street  
Fairbanks, AK 99709

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P. 02



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DIVISION OF OCCUPATIONAL LICENSING

Frank H. Mendenhall, 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 active ingredient 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 Buller

Cindy Buller, 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.

## 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 FSE pediatric products, liquid products, gel tabs and/or liqui-gels.*

\* Sources: CHPA; Buzzco 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)
  - Conicidin-D
  - Chlor-Trimeton D 4 hr

## Schedule V

  
Arkansas

- 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.

## Schedule V

  
Iowa

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

Kentucky

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

Oregon

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 L 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 in the *soft*). 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***

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*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...)***

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- *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***

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*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***

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## ***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

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*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.