

THE COLLEGE OF THE CITY OF NEW YORK
700 700 700 700 700

JULY 11 1975

HB

149

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	*	*	*	*	*	*
Travel	*	*	*	*	*	*
Contractual	*	*	*	*	*	*
Supplies	*	*	*	*	*	*
Equipment	*	*	*	*	*	*
Land & Structures	*	*	*	*	*	*
Grants & Claims	*	*	*	*	*	*
Miscellaneous	*	*	*	*	*	*
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	------------	------------	------------	------------	------------	------------

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Sharleen Griffin, Acting Director Phone 465-4641
 Division: Administrative Services Date/Time 3/7/05 4:35 PM
 Approved by: Portia C.K. Parker, Deputy Commissioner Date 3/7/2005
 Agency: Department of Corrections

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB149
 () Publish Date: _____

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Linda K. Wilson, Deputy Director
 Division: Public Defender Agency
 Approved by: Michael Tibbles, Deputy Commissioner
 Agency: Department of Administration

Phone (907)334-4416
 Date/Time 3/8/05 12:07 PM
 Date 3/8/2005

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB149-LAW-CDCO-3-4-
 () Publish Date: _____

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

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

Prepared by: Kathryn Daughhete, Director Phone: 465-3673
 Division: Administrative Services Division Date/Time: 3/6/05 12:32 PM
 Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General Date: 3/6/2005
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB149-DPS-ASTD-3-7-05
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Saf
Title Relating to prohibiting possession or delivering an RDU Alaska State Troopers
immediate precursor of methamphetamine Component AST Detachments
Sponsor Representative Ramras
Requester House Judiciary Component No. 2325

Expenditures/Revenues

(Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE

(Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill adds language prohibiting possession or delivering an immediate precursor of methamphetamine to another for the purpose of manufacturing methamphetamine a violation of misconduct involving a controlled substance in the second degree. It also limits the purchase, possession, or delivery of pseudoephedrine products within a 30 day period and iodine in any quantity with allowances for specific legitimate businesses. It creates regulations for dispensing, registration, and record-keeping for ephedrine, pseudoephedrine & phenylpropanolamine by manufactures, wholesalers, or distributors but allows for the exemption of the sale of pediatric products that contain under 15 milligrams of these chemicals. Passage of this bill will have no fiscal impact on the Department of Public Safety, however the department feels the language in the bill attempts to, but does not fully address the problems and needs of law enforcement or the safety of the public from this dangerous drug.

Prepared by: Lieutenant Todd Sharp Phone 907-465-3223
Division: Alaska State Troopers Date/Time 3/7/05 9:31 AM
Approved by: Commissioner William Tandeske Date 3/7/2005
Agency: Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

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

Revision Date/Time (Note if correction): _____

Dept. Affected: Commerce

Title Sale of Methamphetamine and Precursors

RDU Occupational Licensing (117)

Component Occupational Licensing

Sponsor Ramras, Wilson, Lynn

Requester House Judiciary

Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual	2.0	2.0	2.0	2.0	2.0	2.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	2.0	2.0	2.0	2.0	2.0	2.0

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

CHANGE IN REVENUES (1156)	2.0	2.0	2.0	2.0	2.0	2.0
------------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services	2.0	2.0	2.0	2.0	2.0	2.0
TOTAL	2.0	2.0	2.0	2.0	2.0	2.0

Estimate of any current year (FY2005) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Jennifer Strickler, Administrative Manager
 Division: Occupational Licensing
 Approved by: Edgar Blatchford, Commissioner
 Agency: Commerce, Community, and Economic Development

Phone (907) 465-2144
 Date/Time 3/7/05 12:22 PM
 Date 3/7/2005

Conceptual Amendment #3 - PASSED

to CS HB 149 (JUD)
version "S"

by Rep. Garza

Section 6, Page 5, line 17

Change 6 grams to 9 grams.

Amendment # 4

by Rep. Gruenberg

to C8HB.149 (JUD)
version "S"

~~Strike Section 9.~~

* concept. A. to A#4: PASSED

In Section 9, in all applicable
places, change 6 grams to 9 grams.

↓
p. 8, 1.14

p. 8, 1.19

p. 8, 1.24

p. 9, 1.5

Conceptual Amendment #7 PASSED

to CS HB 149 (JUD)
version "S"

by Rep. Gara

see attached minutes.

Vanessa Tondini

From: Susan Rael
Sent: Wednesday, March 09, 2005 4:22 PM
To: Vanessa Tondini
Subject: HB 149 snippets

Conceptual Amendment 7, which was adopted:

lg-two other issues .. jr and hc issue of reporting versus ... simply requesting the information. he offered his interpretation of what jr and hc think about ... He suggested that the registry provision be changed [via a Conceptual Amendment 7]: "that it should be a local option, that if a local government believes that they would like to have this information sent to them, that on a periodic basis, if the local government passes an ordinance asking for this, that these records should be sent to the local law enforcement agency on a periodic basis."

Amendment #8 - PASSED

to C8HB149 (JUD)
version "S"

by Rep. Gara

Create civil penalty for knowing violation
of failure to report if local option
created by Amendment # 7 chosen.
Punishable by fine up to \$500.

see attached minutes.

Vanessa Tondini

From: Susan Rael
Sent: Wednesday, March 09, 2005 4:22 PM
To: Vanessa Tondini
Subject: HB 149 snippets

Conceptual Amendment 8, which was adopted:

lg-move Conceptual Amendment 8 to say, "knowing violation of ... the local option section, if the local government buys into it, ... is punishable by a fine of up to \$500 per violation." He posited that the language "up to" gives the court the discretion of whether to impose a fine.

Amendment #11 - PASSED

to CS/HB 119 (JUD)
VERSION "S"

by Rep. Gruenberg

Page 3, line 7.

Change Class B to class C.

Conceptual Amendment #1 - FAILS

to CSHB 149 (JUD)
VERSION "S"

by Rep. Gara

Strike § 6.

Amendment #2 - WITHDRAWN
to CS/HB 149 (JUD) by Rep. Gara
version "S"

page 5, line 29

After "valid prescription"
Insert "or possessed for legal use"

Conceptual Amendment #5 - WITHDRAWN

to C8HB H9 (JUD)
version "S"

by Rep. Gara

In Section 9

Create an exemption for hotels, camps,
business that purchase in bulk
(to sell as "retailer")

Amendment # 6 - WITHDRAWN

to CS/HB 149 (JUD)
version "S"

by Rep. Gara

Page 9, line 3

Insert (b)(2)(E)

business or organization for legal use by persons
employed by or served by that business
or organization.

Amendment #9 - WITHDRAWN

to CHB 149 (JUD)
version "S"

by Rep. Garza

Re: Section 1 of the bill.

See attached minutes

Vanessa Tondini

From: Susan Rael
Sent: Wednesday, March 09, 2005 4:22 PM
To: Vanessa Tondini
Subject: HB 149 snippets

Conceptual Amendment 9, which was withdrawn:

lg-expressed concern with Section 1 of the bill, he indicated that he is not sure that he agrees that there should be a new manslaughter crime. He noted that currently there is a general manslaughter crime, but under [Section 1, subsection (a)(3)] of the bill, the person delivering the substance - "sort of a mule" - would be made "a murderer," adding that he is not sure he is comfortable with that provision.

Amendment # 10 - WITHDRAWN

to CHB 49 (JUD)
version "S"

by Rep. Garza

Page 2, line 1:

Delete "or delivers"

CSHB 149(JUD) Version 24-LS0569 L → S
Explanation of amendments

Page 3, line 7 “class A felony” is changed to a “class B felony” regarding keeping sentencing consistent with the ABA Standards upheld by the appellate court in Alaska.

Page 5, lines 3-4 lessens the mens rae from “knowing” to “reckless”.

Page 5, lines 7-8 lessens the mens rae from “knowing to “reckless”.

Page 5, lines 15-18 “nine grams” is replaced with “six grams” for consistency. Possession of ephedrine, phenylpropanolamine, iodine, and crystal iodine are added as prima facie evidence that the person

- (1) intended to manufacture meth.
- (2) Aid another in the manufacture of meth; or
- (3) Deliver the substance with reckless disregard that it will be used to manufacture meth.

Page 5, lines 24-30 terms for a person who possesses the listed chemicals are changed to be consistent with the definitions on pages 8-10, terms for an iodine distributor are also added.

Page 6, line 3 Structural change AS 11.71.020(a)(2)-~~(6)~~ [5].

Page 7, line 31 added ephedrine and phenylpropanolamine to pseudoephedrine.

Page 8, lines 9-15 consistency, terms for retail distributors, and manufactures are used consistently.

Page 8, lines 16-19 removes pediatric gel and liquid forms of pseudoephedrine from the list of exceptions. Since pseudoephedrine can be extracted from gel and liquid products and meth manufactures may turn to gel or liquid products if pseudoephedrine in tablet form becomes more difficult to acquire in quantity.

Page 8, lines 23-27 adds veterinary uses for iodine and crystal iodine to the exemptions for legitimate businesses.

Page 9, lines 8-11 removes registration with DPS for manufactures, wholesalers and retail sellers of pseudoephedrine since there are already federal registration requirements.

Page 9, lines 17-23

- products containing ephedrine and phenylpropanolamine are added to pseudoephedrine.
- Required identification is changed to “valid government-issued photographic identification”.

- The log book should also include the type of government identification, and the identification number on the card.

Page 9, line 25 iodine and crystal iodine are added.

Page 9, line 29 to page 10, line 14. Adds definitions for the following terms:

- "Dispenser"
- "Retail distributor"

Redefines "readily retrievable" to allow in-person inspections of manufacturers, distributors and wholesalers outside of the State of Alaska.

Page 10, lines 15-16. Specifies a civil penalty that applies to a business if an agent or employee violates any of the pseudoephedrine laws while working for the business. This will keep the business on the hook for violations of law.

24-LS0596AS
Luckhaupt
3/9/05

CS FOR HOUSE BILL NO. 149(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES RAMRAS, Wilson, Lynn

A BILL

FOR AN ACT ENTITLED

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

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

8 * **Section 1.** AS 11.41.120(a) is amended to read:

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

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

12 [OR]

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

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

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

(c) In this section,

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

(2) "physically mistreated" means

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

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

(i) [(A)] death;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 injury or in need of temporary shelter; and

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

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

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

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

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

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

15 or

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

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

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

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

25 or

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

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

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

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

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

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

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

- (i) retailer or as a wholesaler;
- (ii) wholesale drug distributor licensed by the Board of Pharmacy;
- (iii) manufacturer of drug products licensed by the Board of Pharmacy;
- (iv) pharmacist licensed by the Board of Pharmacy; or
- (v) health care professional licensed by the state;

(2) iodine or crystal iodine

(A) in the ordinary course of a legitimate business or service as a water treatment plant or a provider of water treatment services or an employee of those businesses or services;

(B) as a retailer, wholesaler, or manufacturer of water treatment or medical or veterinary supplies or an employee of a retailer, wholesaler, or manufacturer.

* Sec. 7. AS 11.71.030(a) is amended to read:

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

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

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

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

(A) with reckless disregard that the possession occurs

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

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

or

(B) on a school bus.

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

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

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

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

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

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

12 **chemicals.** (a) A person commits the crime of purchase or receipt of restricted
13 amounts of certain listed chemicals if the person purchases or receives more than

14 (1) six grams of the following listed chemical, its salts, isomers, or
15 salts of isomers within any 30-day period:

- 16 (A) ephedrine under AS 11.71.200(4);
- 17 (B) pseudoephedrine under AS 11.71.200(13);
- 18 (C) phenylpropanolamine under AS 11.71.200(11);

19 (2) six grams of the following listed chemicals within any 30-day
20 period:

- 21 (A) iodine under AS 11.71.200(24);
- 22 (B) crystal iodine under AS 11.71.200(24).

23 (v) This section does not apply to a person who lawfully purchases or receives
24 more than six grams of a listed chemical identified in (a)(1) of this section

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

26 (2) in the ordinary course of a legitimate business, or to an employee
27 of a legitimate business, as a

- 28 (A) retailer or as a wholesaler;
- 29 (B) wholesale drug distributor licensed by the Board of
30 Pharmacy;
- 31 (C) manufacturer of drug products licensed by the Board of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Pharmacy;

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

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

(c) This section does not apply to a person who lawfully purchases or receives more than six grams of a listed chemical identified in (a)(2) of this section

(1) in the ordinary course of a legitimate business as a water treatment plant or a provider of water treatment services or an employee of those businesses or services; or

(2) as a wholesaler, retailer, or manufacturer of water treatment or medical or veterinary supplies, or an employee of a retailer, wholesaler, or manufacturer.

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

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

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

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

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

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

Sec. 17.30.090. Dispensation of and registration and record requirements

for certain listed chemicals. (a) A wholesaler, manufacturer, or distributor of

products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their

salts, isomers, or salts of isomers, or iodine or crystal iodine, shall keep complete

records of all transactions involving those products, including the names of all parties

involved in the transaction, the date of the transaction, and the amount of the drug

products involved. The records shall be kept readily retrievable and separate from all

other invoices or records of transactions not involving those products and shall be

maintained for not less than three years and must allow for in-person inspection of the

records by law enforcement officers.

1 (b) A retailer of a product or substance that contains a detectable quantity of
2 ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of
3 isomers, iodine, or crystal iodine may not dispense the substance unless the retailer
4 confirms the identity of the person by valid government-issued photo identification
5 and the retailer requires the purchaser to sign a written log completed by the retailer
6 showing the date of the transaction, name of the purchaser, type of identification and
7 the identification number, and the amount dispensed. The Department of Public
8 Safety and other law enforcement officers shall be allowed access to this log upon
9 request.

10 (c) A person may not offer to sell a product or substance that contains
11 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts
12 of isomers, iodine, or crystal iodine unless that product is displayed behind a service
13 counter and not accessible to the public or in a secured cabinet or storage area that
14 may only be accessed by the seller.

15 (d) In this section,

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

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

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

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

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

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

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

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

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.

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

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

Alaska State Legislature



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

House District 10

House of Representatives

MEMO

To: Representative Lesil McGuire, Chair House Judiciary Committee

Fm: Jane Pierson

Cc:

Date: February 25, 2005

Re: House Bill 149 – Methamphetamine/Pseudoephedrine

Please accept this memo as a request for the House Judiciary Committee to hear HB 149. "An Act relating to the manufacture of methamphetamine and to the sale, possession, and delivery of certain substances and precursors used in the manufacture of methamphetamine."

Thank you in advance for scheduling HB 149 before the House Finance Committee.

Attachments to this memo:

- Sponsor Statement
- CSHB 149
- Original Copy of HB 149
- Sectional for CSHB 149/24-LS0596\F
- Applicable statutes – AS 11.51.100, AS 11.51.100, AS 11.51.130(a), AS 11.71.020, AS 11.71.030, AS 17.30

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

Tourism & Trade

House State Affairs

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

Alaska State Legislature



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

House District 10

House of Representatives

Sponsor Statement

HB 149

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

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

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

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

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

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

Alaska State Legislature



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

House District 10

House of Representatives

Sectional Summary

CSHB 149 (), Methamphetamine/Pseudoephedrine/Anabolic Steroids

Work Order 24-LS0596\L

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

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

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

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

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

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

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

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

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

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

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

24-LS0596\L
Luckhaupt
3/4/05

CS FOR HOUSE BILL NO. 149(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES RAMRAS, Wilson, Lynn

A BILL
FOR AN ACT ENTITLED

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

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

8 * **Section 1.** AS 11.41.120(a) is amended to read:

- 9 (a) A person commits the crime of manslaughter if the person
 - 10 (1) intentionally, knowingly, or recklessly causes the death of another
 - 11 person under circumstances not amounting to murder in the first or second degree;
 - 12 [OR]
 - 13 (2) intentionally aids another person to commit suicide; or

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

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

6 (c) In this section,

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

12 **(2) "physically mistreated" means**

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

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

20 **(i) [(A)] death;**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 injury or in need of temporary shelter; and

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

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

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

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

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

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

15 or

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

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

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

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

25 or

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

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

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

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

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

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

(d) In a prosecution under (a) of this section, possession of nine grams or more of the listed chemical pseudoephedrine, its salts, isomers, or salts of isomers is prima facie evidence that the person intended to use the listed chemical to manufacture methamphetamine or to assist another person to manufacture methamphetamine. The prima facie evidence described in this subsection does not apply to a person who possesses the listed chemical

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

(2) in the ordinary course of a legitimate business as a

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

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

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

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

(E) health care professional licensed by the state.

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

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

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

10 (3) possesses any amount of a schedule IA or IIA 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 * Sec. 8. AS 11.71.180 is amended by adding a new subsection to read:

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

30 (1) boldenone;

31 (2) chlorotestosterone (4-chlorotestosterone);

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

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

27 **Sec. 11.71.210. Purchase or receipt of restricted amounts of certain listed**
28 **chemicals.** (a) A person commits the crime of purchase or receipt of restricted

29 amounts of certain listed chemicals if the person purchases or receives more than

30 (1) six grams of the following listed chemical, its salts, isomers, or
31 salts of isomers within any 30-day period: pseudoephedrine under AS 11.71.200(13);

1 (2) six grams of the following listed chemicals within any 30-day
2 period:

3 (A) iodine under AS 11.71.200(24);

4 (B) crystal iodine under AS 11.71.200(24).

5 (b) This section does not apply to a person who lawfully purchases or receives
6 more than six grams of a listed chemical identified in (a)(1) of this section

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

8 (2) in the ordinary course of a legitimate business as a

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

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

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

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

15 (E) a health care professional licensed by the state; or

16 (3) if the listed chemical is a pediatric product primarily intended for
17 administration, according to label instructions, to children under 12 years of age in
18 liquid form when recommended dosage units, according to label instructions, do not
19 exceed 15 milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine.

20 (c) This section does not apply to a person who lawfully purchases or receives
21 more than six grams of a listed chemical identified in (a)(2) of this section in the
22 ordinary course of

23 (1) a legitimate business as a water treatment plant or a provider of
24 water treatment services;

25 (2) as a wholesaler or retailer of water treatment or medical supplies;

26 (3) providing in-home or business water treatment self-services if the
27 person complied with AS 17.30.090.

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

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

31 (20) "recreation or youth center" means a building, structure, athletic

1 playing field, or playground

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

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

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

7 **Sec. 17.30.090. Dispensation of and registration and record requirements**
8 **for certain listed chemicals.** (a) A wholesaler, manufacturer, or distributor of drug
9 products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their
10 salts, isomers, or salts of isomers, shall obtain a registration annually from the
11 Department of Public Safety. Each wholesaler, manufacturer, or distributor shall keep
12 complete records of all transactions involving those drug products, including the
13 names of all parties involved in the transaction and the amount of the drug products
14 involved. The records shall be kept readily retrievable and separate from all other
15 invoices or records of transactions not involving those drug products and shall be
16 maintained for not less than three years.

17 (b) A dispenser of a product or substance that contains a detectable quantity of
18 pseudoephedrine, or its salts, isomers, or salts of isomers, iodine, or crystal iodine may
19 not dispense the substance unless the dispenser confirms the identity of the person by
20 legal photo identification and the dispenser requires the purchaser to sign a written log
21 or receipt showing the date of the transaction, name of the purchaser, and the amount
22 dispensed. The Department of Public Safety and other law enforcement officers shall
23 be allowed access to this log upon request.

24 (c) A person may not offer to sell a product or substance that contains
25 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts
26 of isomers, unless that product is displayed behind a service counter and not accessible
27 to the public or in a secured cabinet or storage area that may only be accessed by the
28 seller.

29 (d) In this section,

30 (1) "distributor" means a person in the state or another state, other than
31 a manufacturer or wholesaler, who sells, delivers, transfers, or in any manner furnishes

1 a drug product described in (a) of this section to a person who is not the ultimate user
2 or consumer of the product;

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

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

11 (4) "wholesaler" means a person in the state or another state, other than
12 a manufacturer, who sells, transfers, or in any manner furnishes a drug product
13 described in (a) of this section to another person in the state for the purpose of being
14 resold.

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

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

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

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

FEB-10-2005 THU 11:03 AM

FAX NO.

P. 02



RECEIVED
FEB 07 2005
DIVISION OF
OCCUPATIONAL LICENSING
JUNEAU

DIVISION OF OCCUPATIONAL LICENSING

Frank H. Murkowski, Governor

February 3, 2005

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

Dear Representative Wilson:

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

Thank you for your consideration of this matter.

Ochlethom

Sincerely,

Cindy Bueler

Cindy Bueler, Chair
Alaska Board of Pharmacy

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

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

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

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

Douglas Owen

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

Representative Ramras,

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

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

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

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

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

Ann Hensler (202) 307-4670

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

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

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

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

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

Sincerely,
Robert Larango
452-5353

Westlaw.

AK ST § 11.41.120
AS 11.41.120

Page 1

P

ALASKA STATUTES
Title 11. Criminal Law.
Chapter 41. Offenses Against the Person.
Article 1. Homicide.
 Sec. 11.41.120 Manslaughter.

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

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

(2) intentionally aids another person to commit suicide.

(b) Manslaughter is a class A felony.

(§ 3 ch 166 SLA 1978)

<General Materials (GM) - References, Annotations, or Tables>

NOTES TO DECISIONS

Annotator's notes. - Many of the cases cited in the notes below were decided under former AS 11.15.040.

Alaska's new criminal code totally abandons the unlawful act approach to manslaughter and contains no misdemeanor-manslaughter provisions. *Keith v. State*, 612 P.2d 977 (Alaska 1980).

For case holding that the misdemeanor-manslaughter doctrine was encompassed within former manslaughter statute, see *Keith v. State*, 612 P.2d 977 (Alaska 1980).

Requirements for manslaughter under former law. - See *United States v. Barbeau*, 12 Alaska 725, 92 F. Supp. 196 (D. Alaska 1950), *aff'd*, 13 Alaska 551, 193 F.2d 945 (9th Cir. 1951), cert. denied, 343 U.S. 968, 72 S. Ct. 1064, 96 L. Ed. 1364 (1952); *United States v. Aloowsine*, 15 Alaska 483, 17 F.R.D. 211 (D. Alaska 1955); *Jennings v. State*, 404 P.2d 652 (Alaska 1965); *Johnson v. State*, 511 P.2d 118 (Alaska 1973).

Offense is included in the greater charge of murder. *United States v. Barbeau*, 12 Alaska 725, 92 F. Supp. 196 (D. Alaska 1950), *aff'd*, 13 Alaska 551, 193 F.2d 945 (9th Cir. 1951), cert. denied, 343 U.S. 968, 72 S. Ct. 1064, 96 L. Ed. 1364 (1952).

Heat of passion manslaughter was properly determined to be a lesser-included offense of second-degree murder where justification was a disputed factual element distinguishing second-degree murder from manslaughter. *Blackhurst v. State*, 721 P.2d 645 (Alaska Ct. App. 1986).

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

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

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

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

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

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

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

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

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

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

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

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

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

(A) death;

(B) serious or protracted disfigurement;

(C) protracted impairment of health;

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

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

(F) internal bleeding or subdural hematoma;

(G) bone fracture; or

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

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

(1) class B felony if the child dies;

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

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

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

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

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

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

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

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

(b) In this section,

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

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

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

Sec. 11.51.130. Contributing to the delinquency of a minor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) with reckless disregard that the possession occurs

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

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

(B) on a school bus.

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

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

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

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

Repealed or Renumbered

Sec. 17.30.020. Registration requirements; inspections.

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

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

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

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

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

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

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

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

Repealed or Renumbered

Sec. 17.30.060. Records of registrants.

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

Sec. 17.30.070. Order forms; prescriptions.

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

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

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

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

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

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

11.71.190, the attorney general shall, in writing, notify the commissioner of health and social services of the filing.

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

(d) In this section,

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

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

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

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

Article 02. ENFORCEMENT AND FORFEITURE

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

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

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

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

(3) cooperating with the Drug Enforcement Administration of the United States Department of Justice by establishing a centralized unit to accept, catalog, file, and collect statistics, including records of persons who have violated the

provisions of this chapter or AS 11.71 in the state and making the information available for federal, state, and local law enforcement purposes; and

(4) instituting in the superior court, actions for injunctions against continued manufacture, distribution, dispensation, or research with a controlled substance in the state by a person who violates 21 U.S.C. 811 - 830 (Controlled Substances Act) or the regulations adopted under those sections.

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

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

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

Sec. 17.30.110. Items subject to forfeiture.

The following may be forfeited to the state:

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

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

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

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

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

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

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

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

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

Sec. 17.30.112. Proceedings resulting in forfeiture.

(a) Property listed in AS 17.30.110 may be forfeited to the state either upon conviction of the defendant of a violation of this chapter or AS 11.71, or upon judgment of a court in a separate civil proceeding in rem. The court may order a

forfeiture in the in rem proceeding if it finds that an item specified in AS 17.30.110 was used during or in aid of a violation of this chapter or AS 11.71.

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

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

Sec. 17.30.114. Seizure and custody of property.

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

(1) the seizure is incident to a valid arrest or a search under a valid search warrant;

(2) the property subject to seizure has been the subject of an earlier judgment in favor of the state in a criminal proceeding or civil proceeding in rem under this chapter or AS 11.71; or

(3) there is probable cause that the property was used, is being used, or is intended for use, in violation of this chapter or AS 11.71 and the property is easily movable; property seized under this paragraph may not be held for more than 48 hours without a court order obtained to continue its detention.

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

(1) place the property under seal;

(2) remove the property to a place designated by the court;

(3) take custody of the property and remove it to an appropriate location for disposition in accordance with law; or

(4) with court approval, transfer the property to another state or federal law enforcement agency for forfeiture proceedings by that agency; the court having jurisdiction shall grant the approval under this paragraph if the property

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

(B) is

(i) not needed as evidence; or

(ii) needed as evidence, and the property is fungible or the property's evidentiary value can otherwise be preserved without retaining the property within the jurisdiction of the court.

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

Sec. 17.30.116. Procedure for forfeiture action.

(a) Within 20 days after a seizure under AS 17.30.110 - 17.30.126, the commissioner of public safety shall, by certified mail, notify any person known to have an interest in an item with an appraised value of \$500 or more, or who is ascertainable from official registration numbers, licenses, or other state, federal,

or municipal numbers on the item, of the pending forfeiture action. Additionally, the commissioner of public safety shall publish notice of forfeiture action of an item valued at \$500 or more in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the state and distributed in that judicial district. The notice shall be published once each week during four consecutive calendar weeks. The requirements of this subsection do not apply to the forfeiture of controlled substances which have been manufactured, distributed, dispensed, or possessed in violation of this chapter or AS 11.71, regardless of their value.

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

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

Sec. 17.30.118. Petition for release of seized items.

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

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

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

(1) the court finds that the release is in the best interests of the state; or

(2) the claimant provides a bond or other valid and equivalent security equal to twice the assessed value of the item.

Sec. 17.30.120. Petition for sale of seized item.

A claimant may petition the court for sale of an item before final disposition of court proceedings. The court shall grant a petition for sale upon a finding that the sale is in the best interests of the state and the preservation and maintenance of the item seized. Proceeds from the sale plus interest to the date of final disposition of the court proceedings become the subject of the forfeiture action.

Sec. 17.30.122. State disposal of forfeited property.

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

(1) destroy property harmful to the public;

(2) sell the property and use the proceeds for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody, and court costs;

(3) take custody of the property and authorize its use in the enforcement of this chapter or AS 11.71, or transfer it to another agency of the state or a political subdivision of the state for a use in furtherance of the administration of justice;

(4) take custody of the property and remove it for disposition in accordance with law;

(5) forward it to the Drug Enforcement Administration of the United States Department of Justice for disposition; or

(6) transfer ownership of an aircraft to the Alaska Wing, Civil Air Patrol.

Sec. 17.30.124. Remittance to claimant.

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

(1) if the claimant is entitled to the item, it shall be delivered to the claimant immediately;

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

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

Sec. 17.30.126. Forfeiture of controlled substances.

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

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

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

Repealed or Renumbered

Article 03. EDUCATION AND RESEARCH

Sec. 17.30.140. Education and research.

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

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

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

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

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

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

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

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

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

(2) make studies and undertake research to

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

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

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

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

Article 04. GENERAL PROVISIONS

Sec. 17.30.150. Reliance on Drug Enforcement Administration.

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

Sec. 17.30.155. Confidentiality of certain information.

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

Sec. 17.30.900. Definitions.

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

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

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

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

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

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

Vanessa Tondini

From: Dannenberg, Libby [LDannenberg@chpa-info.org]
Sent: Tuesday, March 08, 2005 1:56 PM
To: Vanessa Tondini
Subject: HB 149 - CHPA Additional Comments

Dear Ms. Tondini,

At yesterday's hearing, Representative McGuire suggested that if anyone had additional comments or proposed amendments to HB 149, to submit them before the Committee again takes up the bill on Wednesday.

Unfortunately I have a conflict on Wednesday and will not be able to participate by phone, but I would like to submit additional materials for the Committee's consideration.

I've attached a letter outlining our suggested amendments, a copy of model legislation supported by CHPA, and copies of the Washington State reporting provisions referenced in my testimony. Thank you for the opportunity to submit additional comments. Please do not hesitate to call me if you have any questions or if I can provide any additional information.

Sincerely,
Libby

Libby Dannenberg
State Relations Counsel
Consumer Healthcare Products Association
900 19th Street, NW, Suite 900
Washington, DC 20006
(202) 429-9260
(202) 223-6835 (fax)
ldannenberg@chpa-info.org

3/8/2005



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 Restriction 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, pseudo-phedrine or phenylpropanolamine, if the person knows that the purchaser will use the product as a precursor to methamphetamine or another controlled illegal substance or if the person sells, transfers, distributes or dispenses the product with reckless disregard as to how the product will be used.

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

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

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

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

Sincerely

Libby Dannenberg
State Relations Counsel

Washington State Statutory Provisions on Manufacturer and Wholesaler Reporting

RCW 69.43.020

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

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

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

[2001 c 96 § 3; 1988 c 147 § 2.]

RCW 69.43.030

Exemptions.

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

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

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

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

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

[1988 c 147 § 3.]

RCW 69.43.035

Suspicious transactions--Report--Penalty.

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

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

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

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

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

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

[2004 c 52 § 6; 2001 c 96 § 4.]

Methamphetamine Reduction Act

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

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

This proposed legislation provides for the following:

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

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

METHAMPHETAMINE REDUCTION ACT

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

TITLE I. PRECURSOR DIVERSION

- Sec. 101 Restrictions on the Sale of Methamphetamine Precursors
- Sec. 102 Possession of Methamphetamine Precursor
- Sec. 103 Application to Political Subdivision of State
- Sec. 104 Effective Date

SEC. 101 RESTRICTIONS ON THE SALE OF METHAMPHETAMINE PRECURSORS

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

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

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

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

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

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

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

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

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

SEC. 102 POSSESSION OF METHAMPHETAMINE PRECURSOR

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

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

- (1) a retail distributor of the drug products in section (b) *possessing a valid business license* or wholesaler;
- (2) a wholesale drug distributor, or its agents, licensed by the Board of Pharmacy;
- (3) a manufacturer of drug products in section (b), or its agents, licensed by the Board of Pharmacy;
- (4) a pharmacist licensed by the Board of Pharmacy,
- (5) a licensed healthcare professional possessing the drug products in section (b) in the course of carrying out his profession.

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