



THOMAS J. VILSACK
GOVERNOR

OFFICE OF THE GOVERNOR

SALLY J. PEDERSON
LT. GOVERNOR

March 22, 2005

The Honorable Chester Culver
Secretary of State
State Capitol Building
L O C A L

Dear Mr. Secretary:

I hereby transmit:

Senate File 169, an Act relating to the regulation of substances which are precursors to amphetamine and methamphetamine and providing a penalty and effective dates.

The above Senate File is hereby approved this date.

Sincerely,

A handwritten signature in black ink that reads "Thomas J. Vilsack".

Thomas J. Vilsack
Governor

TJV:jmc

cc: Secretary of the Senate
Chief Clerk of the House





SENATE FILE 169

AN ACT

RELATING TO THE REGULATION OF SUBSTANCES WHICH ARE PRECURSORS TO AMPHETAMINE AND METHAMPHETAMINE AND PROVIDING A PENALTY AND EFFECTIVE DATES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 124.212, subsection 4, Code 2005, is amended by striking the subsection and inserting in lieu thereof the following:

4. PRECURSORS TO AMPHETAMINE AND METHAMPHETAMINE. Unless specifically excepted in paragraph "d" or "e" or listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following precursors to amphetamine or methamphetamine, including their salts, optical isomers, and salts of their optical isomers:

- a. Ephedrine.
- b. Phenylpropanolamine.
- c. Pseudoephedrine. A person shall not purchase more than seven thousand five hundred milligrams of pseudoephedrine, either separately or collectively, within a thirty-day period

from a pharmacy, unless the person has a prescription for a pseudoephedrine product in excess of that quantity.

d. Any product that contains three hundred sixty milligrams or less of pseudoephedrine, its salts, optical isomers, and salts of its optical isomers, which is in liquid, liquid capsule, or liquid-filled gel capsule form, is excepted from this schedule and may be warehoused, distributed, and sold over the counter pursuant to section 126.23A.

e. A pseudoephedrine product warehoused by a distributor located in this state which is warehoused for export to a retailer outside this state is excepted from this schedule. A distributor warehousing and exporting a pseudoephedrine product shall register with the board and comply with any rules adopted by the board and relating to the diversion of pseudoephedrine products from legitimate commerce.

Sec. 2. NEW SECTION. 124.213 PHARMACY PSEUDOEPHEDRINE SALE RESTRICTION -- PENALTY.

A person who purchases more than seven thousand five hundred milligrams of pseudoephedrine from a pharmacy in violation of section 124.212 or a retailer in violation of section 126.23A, either separately or collectively, within a thirty-day period commits a serious misdemeanor.

Sec. 3. Section 126.23A, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

126.23A PSEUDOEPHEDRINE RETAIL RESTRICTIONS.

1. a. A retailer or an employee of a retailer shall not do any of the following:

(1) Sell a product that contains more than three hundred sixty milligrams of pseudoephedrine in violation of section 124.212, subsection 4.

(2) Knowingly sell more than one package of a product containing pseudoephedrine to a person in a twenty-four-hour period.

(3) Sell a package of a pseudoephedrine product that can be further broken down or subdivided into two or more separate and distinct packages or offer promotions where a pseudoephedrine product is given away for free as part of any purchase transaction.

b. A retailer or an employee of a retailer shall do the following:

(1) Provide for the sale of a pseudoephedrine product in a locked cabinet or behind a sales counter where the public is unable to reach the product and where the public is not permitted.

(2) Require a purchaser to present a government-issued photo identification card identifying the purchaser prior to purchasing a pseudoephedrine product.

(3) Require the purchaser to legibly sign a logbook and to also require the purchaser to print the purchaser's name and address in the logbook.

(4) Determine the signature in the logbook corresponds with the name on the government-issued photo identification card.

(5) Keep the logbook twelve months from the date of the last entry.

(6) Provide notification in a clear and conspicuous manner in a location where a pseudoephedrine product is offered for sale stating the following:

Iowa law prohibits the over-the-counter purchase of more than one package of a product containing pseudoephedrine in a twenty-four-hour period or of more than seven thousand five hundred milligrams of pseudoephedrine within a thirty-day period. If you purchase a product containing pseudoephedrine, you are required to sign a logbook which may be accessible to law enforcement officers.

2. A purchaser shall not do any of the following:

a. Purchase more than one package of a pseudoephedrine product within a twenty-four-hour period from a retailer.

b. Purchase more than seven thousand five hundred milligrams of pseudoephedrine from a retailer, either separately or collectively, within a thirty-day period.

3. A purchaser shall legibly sign the logbook and also print the purchaser's name and address in the logbook.

4. Enforcement of this section shall be implemented uniformly throughout the state. A political subdivision of the state shall not adopt an ordinance regulating the display or sale of products containing pseudoephedrine. An ordinance adopted in violation of this section is void and unenforceable and any enforcement activity of an ordinance in violation of this section is void.

5. The logbook may be kept in an electronic format upon approval by the department of public safety.

6. A pharmacy that sells a product that contains three hundred sixty milligrams or less of pseudoephedrine on a retail basis shall comply with the provisions of this section with respect to the sale of such product. However, a pharmacy is exempted from the provisions of this section when selling a pseudoephedrine product pursuant to section 124.212.

7. A retailer or an employee of a retailer that reports to any law enforcement agency any alleged criminal activity related to the purchase or sale of pseudoephedrine or who refuses to sell a pseudoephedrine product to a person is immune from civil liability for that conduct, except in cases of willful misconduct.

8. If a retailer or an employee of a retailer violates any provision of this section, a city or county may assess a civil penalty against the retailer upon hearing and notice as provided in section 126.23B.

9. An employee of a retailer who commits a violation of subsection 1 or a purchaser who commits a violation of subsection 2 commits a simple misdemeanor punishable by a scheduled fine under section 805.8C, subsection 6.

10. As used in this section, "retailer" means a person or business entity engaged in this state in the business of selling products on a retail basis. An "employee of a retailer" means any employee, contract employee, or agent of the retailer.

Sec. 4. NEW SECTION. 126.23B CIVIL PENALTY.

1. A city or a county may enforce section 126.23A, after giving the retailer an opportunity to be heard upon ten days' written notice by restricted certified mail stating the alleged violation and the time and place at which the retailer may appear and be heard.

2. For a violation of section 126.23A by the retailer or an employee of the retailer a civil penalty shall be assessed against the retailer as follows:

a. For a first violation, the retailer shall be assessed a civil penalty in the amount of three hundred dollars.

b. For a second violation within a period of two years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars.

c. For a third violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of two thousand dollars. The retailer may also be prohibited from selling pseudoephedrine for up to three years from the date of assessment of the civil penalty.

d. For a fourth or subsequent violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of three thousand dollars. On a fourth or subsequent violation, the retailer shall be prohibited from selling pseudoephedrine products for three years from the date of the assessment of the civil penalty.

3. The city or county that takes legal action against a retailer under this section shall report the assessment of a civil penalty to the department of public safety within thirty days of the penalty being assessed.

4. The civil penalty shall be collected by the clerk of the district court and shall be distributed as provided in section 602.8105, subsection 4.

Sec. 5. Section 602.8105, subsection 4, Code 2005, is amended to read as follows:

4. The clerk of the district court shall collect a civil penalty assessed against a retailer pursuant to section ~~126.23A~~ 126.23B. Any moneys collected from the civil penalty shall be distributed to the ~~state or a political subdivision of the state as provided in~~ city or county that brought the enforcement action for a violation of section 126.23A, ~~subsection 7.~~

Sec. 6. Section 714.7C, Code 2005, is amended to read as follows:

714.7C THEFT OF PSEUDOEPHEDRINE -- ENHANCEMENT.

Notwithstanding section 714.2, subsection 5, a person who commits a simple misdemeanor theft of ~~more than two packages a~~ product containing any of the following pseudoephedrine from a retailer as defined in section 126.23A commits a serious misdemeanor.

~~1. Pseudoephedrine as the product's sole active ingredient.~~

~~2. Pseudoephedrine in combination with other active ingredients.~~

~~A simple misdemeanor theft of more than two packages containing pseudoephedrine as the products' sole active~~

~~ingredient-which-are-in-liquid-form-does-not-constitute-a serious-misdemeanor-under-this-section.~~

Sec. 7. Section 804.21, subsection 1, Code 2005, is amended to read as follows:

1. A person arrested in obedience to a warrant shall be taken without unnecessary delay before the nearest or most accessible magistrate. The officer shall at the same time deliver to the magistrate the warrant with the officer's return endorsed on it and subscribed by the officer with the officer's official title. However, this section, and sections 804.22 and 804.23, do not preclude the release of an arrested person within the period of time the person would otherwise remain incarcerated while waiting to be taken before a magistrate if the release is pursuant to pretrial release guidelines or a bond schedule promulgated by the judicial council, unless the person is charged with manufacture, delivery, possession with intent to deliver, or distribution of methamphetamine. If, however, a person is released pursuant to pretrial release guidelines, a magistrate must, within twenty-four hours of the release, or as soon as practicable on the next subsequent working day of the court, either approve in writing of the release, or disapprove of the release and issue a warrant for the person's arrest.

Sec. 8. Section 804.22, unnumbered paragraph 2, Code 2005, is amended to read as follows:

This section and the rules of criminal procedure do not affect the provisions of chapter 805 authorizing the release of a person on citation or bail prior to initial appearance, unless the person is charged with manufacture, delivery, possession with intent to deliver, or distribution of methamphetamine. The initial appearance of a person so released shall be scheduled for a time not more than thirty days after the date of release.

Sec. 9. Section 805.8C, subsection 6, Code 2005, is amended by striking the subsection and inserting in lieu thereof the following:

6. PSEUDOEPHEDRINE SALES VIOLATIONS. For violations of section 126.23A, subsection 1, by an employee of a retailer, or for violations of section 126.23A, subsection 2, by a purchaser, the scheduled fine is as follows:

a. If the violation is a first offense, the scheduled fine is one hundred dollars.

b. If the violation is a second offense, the scheduled fine is two hundred fifty dollars.

c. If the violation is a third or subsequent offense, the scheduled fine is five hundred dollars.

Sec. 10. Section 811.2, subsection 1, unnumbered paragraph 2, Code 2005, is amended to read as follows:

Any bailable defendant who is charged with unlawful possession, manufacture, delivery, or distribution of a controlled substance or other drug under chapter 124 and is ordered released shall be required, as a condition of that release, to submit to a substance abuse evaluation and follow any recommendations proposed in the evaluation for appropriate substance abuse treatment. However, if a bailable defendant is charged with manufacture, delivery, possession with the intent to deliver, or distribution of methamphetamine, its salts, optical isomers, and salts of its optical isomers, the defendant shall, in addition to a substance abuse evaluation, remain under supervision and be required to undergo random drug tests as a condition of release.

Sec. 11. Section 811.2, subsection 3, Code 2005, is amended to read as follows:

3. RELEASE AT INITIAL APPEARANCE. This chapter does not preclude the release of an arrested person as authorized by section 804.21, unless the arrested person is charged with manufacture, delivery, possession with the intent to deliver, or distribution of methamphetamine.

Sec. 12. RETAILER COMPLIANCE. Be it deemed necessary for public safety purposes, retailers shall begin to take steps to come into compliance with the provisions of this Act as soon as possible.

Sec. 13. DRUG POLICY COORDINATOR -- REPORT. The drug policy coordinator shall report, in a joint meeting, to the committee on judiciary of the senate and the committee on public safety of the house of representatives in January 2006 and in January 2007, the effects of this Act on methamphetamine abuse and related criminal activity.

Sec. 14. EFFECTIVE DATES. This Act takes effect sixty days from the date of enactment or July 1, 2005, whichever is earlier. However, the portion of the section of this Act

amending section 124.212, subsection 4, which makes all ephedrine products schedule V controlled substances, and the sections of this Act amending sections 804.21, 804.22, and 811.2, take effect upon enactment.



JEFFREY M. LAMBERTI
President of the Senate



CHRISTOPHER C. RANTS
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 169, Eighty-first General Assembly.



MICHAEL E. MARSHALL
Secretary of the Senate

Approved MARCH 22, 2005



THOMAS J. VILSACK
Governor