

Senate File 169 - Reprinted

SENATE FILE _____
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1025)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the regulation of substances which are
2 precursors to amphetamine and methamphetamine and providing a
3 penalty and effective dates.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1123SV 81
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1 1 Section 1. Section 124.212, subsection 4, Code 2005, is
1 2 amended by striking the subsection and inserting in lieu
1 3 thereof the following:
1 4 4. PRECURSORS TO AMPHETAMINE AND METHAMPHETAMINE. Unless
1 5 specifically excepted in paragraph "d" or listed in another
1 6 schedule, any material, compound, mixture, or preparation
1 7 which contains any quantity of the following precursors to
1 8 amphetamine or methamphetamine, including their salts, optical
1 9 isomers, and salts of their optical isomers:
1 10 a. Ephedrine.
1 11 b. Phenylpropanolamine.
1 12 c. Pseudoephedrine. A purchaser shall not purchase more
1 13 than six thousand milligrams of pseudoephedrine within a
1 14 thirty-day period from a pharmacy, unless the person has a
1 15 prescription for a pseudoephedrine product in excess of that
1 16 quantity.
1 17 d. Any material, compound, mixture, or preparation which
1 18 contains three hundred sixty milligrams or less of
1 19 pseudoephedrine, its salts, optical isomers, and salts of its
1 20 optical isomers, is excepted from this schedule and may be
1 21 warehoused and sold by a distributor and may be sold over the
1 22 counter by a retailer pursuant to section 126.23A.
1 23 Sec. 2. Section 126.23A, Code 2005, is amended by striking
1 24 the section and inserting in lieu thereof the following:
1 25 126.23A PSEUDOEPHEDRINE == RETAIL RESTRICTIONS.
1 26 1. As used in this section, "retailer" means a person or
1 27 business entity engaged in this state in the business of
1 28 selling products on a retail basis. An "employee of a
1 29 retailer" means any employee, contract employee, or agent of
1 30 the retailer.
1 31 2. A retailer shall sell and a purchaser shall only
1 32 purchase pseudoephedrine products in the following manner:
1 33 a. A retailer or an employee of a retailer shall not
1 34 knowingly sell to a person and a person shall not purchase in
1 35 a twenty-four-hour period more than two packages of a product
2 1 containing pseudoephedrine.
2 2 b. A retailer or an employee of a retailer shall not sell
2 3 a package containing pseudoephedrine if the package contains
2 4 more than three hundred sixty milligrams of pseudoephedrine,
2 5 unless the retailer is a pharmacy and the product is regulated
2 6 and sold as a schedule V controlled substance under section
2 7 124.212.
2 8 c. A retailer who offers for sale a product containing
2 9 pseudoephedrine shall offer such product for sale in a locked
2 10 cabinet or behind a sales counter where the public is unable
2 11 to reach the product and where the public is not permitted.
2 12 d. A retailer or an employee of a retailer shall require a
2 13 purchaser to present a government issued photo identification
2 14 card identifying the purchaser prior to purchasing a product
2 15 containing pseudoephedrine. A purchaser shall also sign a
2 16 logbook prior to purchase and input the purchaser's name and
2 17 address into the logbook. The retailer shall keep the logbook

2 18 for a minimum period of two years from the date of any
2 19 purchase. The logbook may be kept in an electronic format
2 20 upon approval by the department of public safety.
2 21 e. A retailer shall provide notification in a clear and
2 22 conspicuous manner in a location where a product containing
2 23 pseudoephedrine is offered for sale stating the following:
2 24 Iowa law prohibits the purchase of more than two packages
2 25 containing pseudoephedrine in a twenty-four-hour period unless
2 26 the purchase is made through a pharmacist. If you purchase a
2 27 product containing pseudoephedrine, you are required to sign a
2 28 logbook which shall be accessible to law enforcement officers.
2 29 f. A purchaser shall not purchase more than six thousand
2 30 milligrams of pseudoephedrine from a retailer within a thirty=
2 31 day period.

2 32 3. a. A retailer shall, upon request by an authorized
2 33 agent of the department of public safety, make accessible to
2 34 the agent the records of the purchase, sale, or other
2 35 disposition of pseudoephedrine products and also make
3 1 accessible inventory records of such products maintained in
3 2 accordance with rules adopted by the department of public
3 3 safety.

3 4 b. Any certified peace officer shall have access to the
3 5 logbook kept by a retailer pursuant to subsection 2, paragraph
3 6 "d". The department of public safety shall adopt rules to
3 7 administer this paragraph.

3 8 4. Enforcement of this section shall be implemented
3 9 uniformly throughout the state. A political subdivision of
3 10 the state shall not adopt an ordinance regulating the display
3 11 or sale of products containing pseudoephedrine. An ordinance
3 12 adopted in violation of this section is void and unenforceable
3 13 and any enforcement activity of an ordinance in violation of
3 14 this section is void.

3 15 5. A pharmacy that sells a product that contains three
3 16 hundred sixty milligrams or less of pseudoephedrine shall
3 17 comply with the provisions of this section with respect to the
3 18 sale of such product.

3 19 6. A retailer or an employee of a retailer shall not be
3 20 civilly liable for acts, omissions, or decisions made in good
3 21 faith under this section.

3 22 7. If a retailer or an employee of a retailer violates any
3 23 provision of this section, the state, or a city or county, may
3 24 assess a civil penalty against the retailer upon hearing and
3 25 notice as provided in section 126.23B.

3 26 8. An employee of a retailer who commits a violation of
3 27 subsection 2 commits a simple misdemeanor punishable by a
3 28 scheduled fine under section 805.8C, subsection 6.

3 29 9. A purchaser who commits a violation of subsection 2
3 30 commits a simple misdemeanor for a first violation, a serious
3 31 misdemeanor for a second violation, and an aggravated
3 32 misdemeanor for a third or subsequent violation.

3 33 10. A purchaser who purchases more than six thousand
3 34 milligrams of pseudoephedrine from a pharmacy under section
3 35 124.212 or who purchases more than six thousand milligrams of
4 1 pseudoephedrine from a retailer under this section within a
4 2 thirty day period, commits an aggravated misdemeanor.

4 3 Sec. 3. NEW SECTION. 126.23B CIVIL PENALTY.

4 4 1. The state, a city, or a county may enforce section
4 5 126.23A, after giving the retailer an opportunity to be heard
4 6 upon ten days' written notice stating the alleged violation
4 7 and the time and place at which the retailer may appear and be
4 8 heard.

4 9 2. For a violation of section 126.23A by the retailer or
4 10 an employee of the retailer a civil penalty shall be assessed
4 11 against the retailer as follows:

4 12 a. For a first violation, the retailer shall be assessed a
4 13 civil penalty in the amount of three hundred dollars.

4 14 b. For a second violation within a period of two years,
4 15 the retailer shall be assessed a civil penalty in the amount
4 16 of one thousand five hundred dollars.

4 17 c. For a third violation within a period of three years,
4 18 the retailer shall be assessed a civil penalty in the amount
4 19 of two thousand dollars. The retailer may also be prohibited
4 20 from selling pseudoephedrine for up to three years from the
4 21 date of assessment of the civil penalty.

4 22 d. For a fourth or subsequent violation within a period of
4 23 three years, the retailer shall be assessed a civil penalty in
4 24 the amount of three thousand dollars. On a fourth or
4 25 subsequent violation, the retailer shall be prohibited from
4 26 selling pseudoephedrine products for three years from the date
4 27 of the assessment of the civil penalty.

4 28 3. The state or local authority that takes legal action

4 29 against a retailer under this section shall report the
4 30 assessment of a civil penalty to the department of public
4 31 safety within thirty days of the penalty being assessed.

4 32 4. The civil penalty shall be collected by the clerk of
4 33 the district court and shall be distributed as provided in
4 34 section 602.8105, subsection 4.

4 35 Sec. 4. Section 602.8105, subsection 4, Code 2005, is
5 1 amended to read as follows:

5 2 4. The clerk of the district court shall collect a civil
5 3 penalty assessed against a retailer pursuant to section
5 4 ~~126.23A~~ 126.23B. Any moneys collected from the civil penalty
5 5 shall be distributed to the state, or a political subdivision
5 6 of the state as provided in to the city or county that brought
5 7 the enforcement action for a violation of section 126.23A,
5 8 ~~subsection 7.~~

5 9 Sec. 5. Section 714.7C, Code 2005, is amended by striking
5 10 the section and inserting in lieu thereof the following:

5 11 714.7C THEFT OF PSEUDOEPHEDRINE.

5 12 A person who commits theft of pseudoephedrine is guilty of
5 13 the following:

5 14 1. If the amount of pseudoephedrine is less than seven
5 15 hundred twenty milligrams, the person shall be subject to the
5 16 penalties under section 714.2.

5 17 2. If the amount of pseudoephedrine is seven hundred
5 18 twenty milligrams or more but less than four thousand three
5 19 hundred twenty milligrams, the person is guilty of a serious
5 20 misdemeanor.

5 21 3. If the amount of pseudoephedrine is four thousand three
5 22 hundred twenty milligrams or more but less than eight thousand
5 23 six hundred forty milligrams, the person commits an aggravated
5 24 misdemeanor.

5 25 4. If the amount of pseudoephedrine is eight thousand six
5 26 hundred forty milligrams or more, the person commits a class
5 27 "C" felony.

5 28 Sec. 6. Section 805.8C, subsection 6, Code 2005, is
5 29 amended by striking the subsection and inserting in lieu
5 30 thereof the following:

5 31 6. PSEUDOEPHEDRINE SALES VIOLATIONS. For violations of
5 32 section 126.23A, subsection 2, by an employee of a retailer,
5 33 the scheduled fine is as follows:

5 34 a. If the violation is a first offense, the scheduled fine
5 35 is one hundred dollars.

6 1 b. If the violation is a second offense, the scheduled
6 2 fine is two hundred fifty dollars.

6 3 c. If the violation is a third or subsequent offense, the
6 4 scheduled fine is five hundred dollars.

6 5 Sec. 7. Section 811.2, subsection 1, paragraph e,
6 6 unnumbered paragraph 2, Code 2005, is amended to read as
6 7 follows:

6 8 Any bailable defendant who is charged with unlawful
6 9 possession, manufacture, delivery, or distribution of a
6 10 controlled substance or other drug under chapter 124 and is
6 11 ordered released shall be required, as a condition of that
6 12 release, to submit to a substance abuse evaluation and follow
6 13 any recommendations proposed in the evaluation for appropriate
6 14 substance abuse treatment. However, if a bailable defendant
6 15 is charged with manufacture, delivery, possession with the
6 16 intent to deliver, or distribution of methamphetamine, its
6 17 salts, optical isomers, and salts of its optical isomers, the
6 18 defendant shall, in addition to a substance abuse evaluation,
6 19 remain under supervision and be required to undergo random
6 20 drug tests as a condition of release.

6 21 Sec. 8. DRUG POLICY COORDINATOR == REPORT. The drug
6 22 policy coordinator shall report to the judiciary committees of
6 23 the senate and the house of representatives in January 2006
6 24 and in January 2007, the effects of this Act on
6 25 methamphetamine abuse and any related criminal activity.

6 26 Sec. 9. EFFECTIVE DATES. This Act takes effect sixty days
6 27 from the date of enactment or July 1, 2005, whichever is
6 28 earlier. However, the section of this Act amending section
6 29 811.2 and the portion of the section of this Act amending
6 30 section 124.212, subsection 4, which makes all ephedrine
6 31 products schedule V controlled substances, take effect upon
6 32 enactment.

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