

FILED FEB 16 2005

SENATE FILE 169  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1025)

Passed Senate, Date 2-17-05 Passed House, Date 3-9-05  
Vote: Ayes 50 Nays 0 Vote: Ayes 100 Nays 0  
Approved March 22, 2005

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:

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*Conference Comm. Rpt.*  
*adopted* *adopted*  
*3-16-05* *3-16-05*  
*50-0* *98-0*

SC 169

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

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

10 a. Ephedrine.

11 b. Phenylpropanolamine.

12 c. Pseudoephedrine. A pharmacy shall not knowingly sell  
13 more than six thousand milligrams of pseudoephedrine to a  
14 person within a thirty-day period, unless the person has a  
15 prescription for a pseudoephedrine product in excess of that  
16 quantity.

17 d. Any material, compound, mixture, or preparation which  
18 contains three hundred sixty milligrams or less of  
19 pseudoephedrine, its salts, optical isomers, and salts of its  
20 optical isomers, is excepted from this schedule and may be  
21 sold over the counter pursuant to section 126.23A.

22 Sec. 2. Section 126.23A, Code 2005, is amended by striking  
23 the section and inserting in lieu thereof the following:

24 126.23A PSEUDOEPHEDRINE -- RETAIL RESTRICTIONS.

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

30 2. A retailer shall sell and a purchaser shall only  
31 purchase pseudoephedrine products in the following manner:

32 a. A retailer or an employee of a retailer shall not  
33 knowingly sell to a person and a person shall not purchase in  
34 a twenty-four-hour period more than two packages of a product  
35 containing pseudoephedrine.

1 b. A retailer or an employee of a retailer shall not sell  
2 a package containing pseudoephedrine if the package contains  
3 more than three hundred sixty milligrams of pseudoephedrine,  
4 unless the retailer is a pharmacy and the product is regulated  
5 and sold as a schedule V controlled substance under section  
6 124.212.

7 c. A retailer who offers for sale a product containing  
8 pseudoephedrine shall offer such product for sale in a locked  
9 cabinet or behind a sales counter where the public is unable  
10 to reach the product and where the public is not permitted.

11 d. A retailer or an employee of a retailer shall require a  
12 purchaser to present a government issued photo identification  
13 card identifying the purchaser prior to purchasing a product  
14 containing pseudoephedrine. A purchaser shall also sign a  
15 logbook prior to purchase and input the purchaser's name and  
16 address into the logbook. The logbook may be kept in an  
17 electronic format upon approval by the department of public  
18 safety. Any law enforcement officer, pursuant to a policy  
19 adopted by the department of public safety, shall have access  
20 to the logbook.

21 e. A retailer shall provide notification in a clear and  
22 conspicuous manner in a location where a product containing  
23 pseudoephedrine is offered for sale stating the following:

24 Iowa law prohibits the purchase of more than two packages  
25 containing pseudoephedrine in a twenty-four-hour period unless  
26 the purchase is made through a pharmacist. If you purchase a  
27 product containing pseudoephedrine, you are required to sign a  
28 logbook which shall be accessible to law enforcement officers.

29 f. A retailer shall not knowingly sell more than six  
30 thousand milligrams of pseudoephedrine to a person within a  
31 thirty-day period.

32 g. A retailer shall, upon request by an authorized agent  
33 of the department of public safety, make accessible to the  
34 agent the following records recorded during the past twelve  
35 months:

1 (1) The number of pseudoephedrine products purchased from  
2 a wholesaler or distributor.

3 (2) The number of pseudoephedrine products stolen from the  
4 retailer.

5 (3) The number of pseudoephedrine products sold by the  
6 retailer.

7 (4) The number of pseudoephedrine products damaged and  
8 disposed of through other means than a sale to a customer.

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

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

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

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

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

29 1. The state, a city, or a county may enforce section  
30 126.23A, after giving the retailer an opportunity to be heard  
31 upon ten days' written notice stating the alleged violation  
32 and the time and place at which the retailer may appear and be  
33 heard.

34 2. For a violation of section 126.23A by the retailer or  
35 an employee of the retailer a civil penalty shall be assessed

1 against the retailer as follows:

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

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

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

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

18 3. The state or local authority that takes legal action  
19 against a retailer under this section shall report the  
20 assessment of a civil penalty to the department of public  
21 safety within thirty days of the penalty being assessed.

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

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

27 4. The clerk of the district court shall collect a civil  
28 penalty assessed against a retailer pursuant to section  
29 126.23A. Any moneys collected from the civil penalty shall be  
30 distributed to the state, ~~or a political subdivision of the~~  
31 state-as-provided-in to the city or county that brought the  
32 enforcement action for a violation of section 126.23A  
33 subsection-7.

34 Sec. 5. Section 714.7C, Code 2005, is amended to read as  
35 follows:

1 714.7C THEFT OF PSEUDOEPHEDRINE -- ENHANCEMENT.

2 Notwithstanding section 714.2, subsection 5, a person who  
3 commits a simple misdemeanor theft of more than two packages  
4 of a product containing any-of-the-following pseudoephedrine  
5 commits a serious misdemeanor.

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

8 ~~2.--Pseudoephedrine-in-combination-with-other-active~~  
9 ~~ingredients.~~

10 ~~A-simple-misdemeanor-theft-of-more-than-two-packages~~  
11 ~~containing-pseudoephedrine-as-the-products'-sole-active~~  
12 ~~ingredient-which-are-in-liquid-form-does-not-constitute-a~~  
13 ~~serious-misdemeanor-under-this-section.~~

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

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

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

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

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

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

29 Any bailable defendant who is charged with unlawful  
30 possession, manufacture, delivery, or distribution of a  
31 controlled substance or other drug under chapter 124 and is  
32 ordered released shall be required, as a condition of that  
33 release, to submit to a substance abuse evaluation and follow  
34 any recommendations proposed in the evaluation for appropriate  
35 substance abuse treatment. However, if a bailable defendant

1 is charged with manufacture, delivery, possession with the  
2 intent to deliver, or distribution of methamphetamine, its  
3 salts, optical isomers, and salts of its optical isomers, the  
4 defendant shall, in addition to a substance abuse evaluation,  
5 remain under supervision and be required to undergo random  
6 drug tests as a condition of release.

7 Sec. 8. EFFECTIVE DATES. This Act takes effect sixty days  
8 from the date of enactment or July 1, 2005, whichever is  
9 earlier. However, the section of this Act amending section  
10 811.2 and the portion of the section of this Act amending  
11 section 124.212, subsection 4, which makes all ephedrine  
12 products schedule V controlled substances, take effect upon  
13 enactment.

14 EXPLANATION

15 This bill makes most precursor substances to amphetamine  
16 and methamphetamine schedule V controlled substances.

17 The bill makes all products containing ephedrine and  
18 phenylpropanolamine, and most pseudoephedrine products, a  
19 schedule V controlled substance.

20 The bill limits a retailer to selling pseudoephedrine  
21 products which contain 360 milligrams or less of  
22 pseudoephedrine, unless the retailer is a pharmacy and the  
23 product is sold as a schedule V controlled substance.

24 The bill prohibits a political subdivision of the state  
25 from adopting an ordinance regulating the display or sale of  
26 products containing pseudoephedrine.

27 RETAILER. Under the bill, a retailer shall not sell and a  
28 person shall not purchase in a 24-hour period more than two  
29 packages of a product containing pseudoephedrine. The bill  
30 requires a purchaser to present a government-issued photo  
31 identification, sign a logbook, and input the purchaser's name  
32 and address into the logbook prior to purchase. The logbook  
33 may be kept in an electronic format upon approval by the  
34 department of public safety. A certified peace officer shall  
35 have access to the logbook under the bill pursuant to a policy

1 developed by the department of public safety. The bill also  
2 permits an agent of the department of public safety to review  
3 the pseudoephedrine inventory records of a retailer upon  
4 request. If a retailer sells a pseudoephedrine product, the  
5 bill requires the product to be displayed in a locked cabinet  
6 or behind a sales counter where the public is unable to reach  
7 the product and where the public is not permitted.

8 Under the bill a retailer shall not sell more than 6,000  
9 milligrams of pseudoephedrine to a person within a 30-day  
10 period.

11 The bill requires that a retailer shall also provide  
12 notification in a clear manner that Iowa law prohibits the  
13 purchase of more than two packages containing pseudoephedrine  
14 unless the purchase is made through a pharmacist.

15 PHARMACY. The bill provides that a pharmacy that sells a  
16 product containing 360 milligrams or less of pseudoephedrine  
17 shall comply with the provisions of the bill with respect to  
18 the sale of such products.

19 For all other products that contain more than 360  
20 milligrams of pseudoephedrine, the bill requires the product  
21 to be considered a schedule V controlled substance and to be  
22 distributed through a pharmacy. Iowa administrative code rule  
23 657-10.31 establishes the rules for dispensing a schedule V  
24 controlled substance in a pharmacy. The rule requires the  
25 distribution be regulated by pharmacists, and be distributed  
26 only for a medical purpose. A schedule V controlled substance  
27 does not require a prescription, but must be kept off public  
28 access shelves. The rule also limits the amount and frequency  
29 of purchase and requires presentation of an identification and  
30 a signature before purchase. The rule prohibits a person  
31 under the age of 18 from purchasing a schedule V product.

32 Under the bill a pharmacy shall also not sell more than  
33 6,000 milligrams of schedule V pseudoephedrine to a person  
34 within a 30-day period, without a prescription for an excess  
35 amount.

1 CRIMINAL OFFENSE. An employee of a retailer or a purchaser  
2 who commits a violation of Code section 126.23A, subsection 2,  
3 commits a simple misdemeanor punishable by a scheduled fine.  
4 For a first offense the scheduled fine is \$100, for a second  
5 offense the scheduled fine is \$250, and for a third or  
6 subsequent offense the scheduled fine is \$500. The bill also  
7 increases the penalty for theft of any pseudoephedrine product  
8 from a simple misdemeanor to a serious misdemeanor, if the  
9 value of the theft is \$200 or less.

10 CIVIL PENALTY. Upon a hearing, if a retailer or an  
11 employee of a retailer violates the bill, the state, city, or  
12 county enforcing the provisions of the bill shall assess a  
13 civil penalty against the retailer in the amount of \$300 for a  
14 first violation. For a second violation within two years, the  
15 civil penalty shall be \$1,500. For a third violation within a  
16 period of three years, the retailer shall be assessed a civil  
17 penalty in the amount of \$2,000, and may be prohibited from  
18 selling pseudoephedrine for a period of up to three years.  
19 For a fourth or subsequent violation within a period of three  
20 years, the retailer shall be assessed a civil penalty of  
21 \$3,000, and the retailer shall be prohibited from selling  
22 pseudoephedrine products for a period of three years.

23 BAIL RESTRICTIONS. The bill requires that a person charged  
24 with the manufacture, delivery, or possession with intent to  
25 deliver, or distribution of methamphetamine, be supervised and  
26 be required to undergo random drug tests as a condition of  
27 release on bail.

28 EFFECTIVE DATES. The bill takes effect 60 days from the  
29 date of enactment or July 1, 2005, whichever is sooner.  
30 However, the section of the bill amending Code section 811.2  
31 on bail and the portion of the bill making all ephedrine  
32 products schedule V controlled substances take effect upon  
33 enactment.

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**EIGHTY FIRST GENERAL ASSEMBLY  
2005 REGULAR SESSION  
DAILY  
SENATE CLIP SHEET**

FEBRUARY 21, 2005

**SENATE FILE 169**

**S-3002**

- 1 Amend Senate File 169 as follows:
- 2 1. Page 1, by striking lines 12 through 14 and  
3 inserting the following:
- 4 "c. Pseudoephedrine. A purchaser shall not  
5 purchase more than six thousand milligrams of  
6 pseudoephedrine within a thirty-day period from a  
7 pharmacy, unless the person has a".
- 8 2. Page 1, line 20, by inserting after the word  
9 "be" the following: "warehoused and sold by a  
10 distributor and may be".
- 11 3. Page 1, line 21, by inserting after the word  
12 "counter" the following: "by a retailer".
- 13 4. Page 2, line 16, by inserting after the word  
14 "logbook." the following: "The retailer shall keep  
15 the logbook for a minimum period of two years from the  
16 date of any purchase."
- 17 5. Page 2, by striking lines 18 through 20 and  
18 inserting the following: "safety."
- 19 6. Page 2, by striking lines 29 through 30 and  
20 inserting the following:
- 21 "f. A purchaser shall not purchase more than six  
22 thousand milligrams of pseudoephedrine from a retailer  
23 within a".
- 24 7. Page 2, line 32, by striking the word "g." and  
25 inserting the following: "2A. a."
- 26 8. By striking page 2, line 34, through page 3,  
27 line 8, and inserting the following: "agent the  
28 records of the purchase, sale, or other disposition of  
29 pseudoephedrine products and also make accessible  
30 inventory records of such products maintained in  
31 accordance with rules adopted by the department of  
32 public safety."
- 33 9. Page 3, by inserting before line 9 the  
34 following:
- 35 "b. Any certified peace officer shall have access  
36 to the logbook kept by a retailer pursuant to  
37 subsection 2, paragraph "d". The department of public  
38 safety shall adopt rules to administer this  
39 paragraph."
- 40 10. Page 3, by inserting after line 19 the  
41 following:
- 42 "\_\_\_\_\_. A retailer or an employee of a retailer  
43 shall not be civilly liable for acts, omissions, or  
44 decisions made in good faith under this section."
- 45 11. Page 3, line 24, by striking the words "or a  
46 purchaser".
- 47 12. Page 3, by inserting after line 27 the  
48 following:
- 49 "\_\_\_\_\_. A purchaser who commits a violation of  
50 subsection 2 commits a simple misdemeanor for a first

**S-3002**

1 violation, a serious misdemeanor for a second  
2 violation, and an aggravated misdemeanor for a third  
3 or subsequent violation.

4 \_\_\_\_\_. A purchaser who purchases more than six  
5 thousand milligrams of pseudoephedrine from a pharmacy  
6 under section 124.212 or who purchases more than six  
7 thousand milligrams of pseudoephedrine from a retailer  
8 under this section within a thirty day period, commits  
9 an aggravated misdemeanor."

10 13. Page 4, line 29, by striking the figure  
11 "126.23A" and inserting the following: "~~126.23A~~  
12 126.23B".

13 14. By striking page 4, line 34, through page 5,  
14 line 13, and inserting the following:

15 "Sec. \_\_\_\_\_. Section 714.7C, Code 2005, is amended  
16 by striking the section and inserting in lieu thereof  
17 the following:

18 714.7C THEFT OF PSEUDOEPHEDRINE.

19 A person who commits theft of pseudoephedrine is  
20 guilty of the following:

21 1. If the amount of pseudoephedrine is less than  
22 seven hundred twenty milligrams, the person shall be  
23 subject to the penalties under section 714.2.

24 2. If the amount of pseudoephedrine is seven  
25 hundred twenty milligrams or more but less than four  
26 thousand three hundred twenty milligrams, the person  
27 is guilty of a serious misdemeanor.

28 3. If the amount of pseudoephedrine is four  
29 thousand three hundred twenty milligrams or more but  
30 less than eight thousand six hundred forty milligrams,  
31 the person commits an aggravated misdemeanor.

32 4. If the amount of pseudoephedrine is eight  
33 thousand six hundred forty milligrams or more, the  
34 person commits a class "C" felony."

35 15. Page 5, lines 18 and 19, by striking the  
36 words "or a purchaser".

37 16. Page 6, by inserting after line 6 the  
38 following:

39 "Sec. \_\_\_\_\_. DRUG POLICY COORDINATOR -- REPORT. The  
40 drug policy coordinator shall report to the judiciary  
41 committees of the senate and the house of  
42 representatives in January 2006 and in January 2007,  
43 the effects of this Act on methamphetamine abuse and  
44 any related criminal activity."

45 17. By renumbering as necessary.

By BOB BRUNKHORST  
DAVID MILLER

KEITH A. KREIMAN  
HERMAN C. QUIRMBACH

**Fiscal Services Division**  
**Legislative Services Agency**  
**Fiscal Note**

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SF 169 - Methamphetamine Precursors (LSB 1123 SV)

Analyst: Jennifer Acton (Phone: (515) 281-7846) (jennifer.acton@legis.state.ia.us)

Fiscal Note Version - New

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**Description**

Senate File 169 relates to the regulation of substances which are precursors to amphetamine and methamphetamine and provides a penalty. The Bill restricts bail for persons charged with the manufacture, delivery, or possession with intent to deliver, or distribution of methamphetamine, by requiring offenders to be supervised and to undergo random drug tests as a condition of release on bail. The Sections of the Bill that make ephedrine and most pseudoephedrine products a Schedule V controlled substance take effect upon enactment.

**Assumptions**

1. A lag effect of six months is assumed from the law's effective date to the date of the first entry of affected offenders into the correctional system.
2. In calendar year 2003, there were approximately 2,400 arrests for amphetamine and methamphetamine.
3. There are approximately 500 people on pre-trial release supervision charged with manufacturing, delivery, or possession with intent to deliver, or distribute methamphetamine. Under current law, approximately 21.0% of all people arrested for these charges are released on pre-trial release supervision. The remaining 79.0% of the people may remain in jail or be released by some other method, such as release on their own recognizance or by posting bail. Under the Bill, there will be approximately 875 new cases for pre-trial release supervision.
4. Community Based Corrections (CBC) staffing standards are one probation officer for every 60 people on pre-trial release.
5. The total cost for urinalysis testing is \$180 for each person based on a six month average length of stay on supervision. This figure includes random testing at least four times a month over the six month supervision period.
6. In calendar year 2004, there were approximately 1,500 meth labs seized by State and local law enforcement. Approximately 42.0% of these labs were seized by the State. Senate File 169 may reduce the number of labs seized by approximately 24.0% annually based on similar legislation enacted in other States.
7. In calendar year 2004, the total cost to clean up meth lab sites in Iowa was \$1.2 million (\$800 per site). This figure includes a mix of federal, State, and local funds. Approximately 40.0% of the Division of Narcotics Enforcement's budget is federal funds, which are anticipated to decline in future fiscal years.
8. There have been no convictions for any retail provisions concerning precursors or the enhanced penalties for theft of pseudoephedrine. The law took effect July 1, 2004.
9. The average State costs for one new simple misdemeanor conviction ranges from \$14 to \$270. The average State costs for one new serious misdemeanor conviction ranges from \$100 to \$4,000. The costs may be incurred across multiple years while the offender is supervised in the correctional system.

**Correctional Impact**

Senate File 169 may result in approximately 875 additional people annually being supervised in CBC and required to undergo random drug testing.

## **Fiscal Impact**

The bail restrictions of SF169 will impact CBC District Department budgets. Costs in FY 2006 are anticipated to be approximately \$454,000 (staff and testing supply costs) and 7.5 FTE positions. Annualized costs in FY 2007 are anticipated to be approximately \$908,000 and 15.0 FTE positions.

It is anticipated the costs of the new simple misdemeanor and the enhanced penalty for theft will not result in a significant fiscal impact.

Any State, federal, and local savings generated by a reduction in meth labs will be redirected to other drug interdiction efforts by State and local law enforcement. Any savings generated by the provisions of SF 169 cannot be determined.

Under current law, there have been no civil penalty convictions. The law took effect July 1, 2004. Senate File 169 defines a graduated scale of civil fines. It is anticipated there will be no additional civil penalty revenue generated from SF 169.

## **Sources**

Department of Human Rights, Criminal Juvenile Justice Planning  
Department of Corrections  
Department of Public Safety  
Governor's Office of Drug Control Policy

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Dennis C Prouty

February 16, 2005

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The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

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

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

10 a. Ephedrine.

11 b. Phenylpropanolamine.

12 c. Pseudoephedrine. A purchaser shall not purchase more  
13 than six thousand milligrams of pseudoephedrine within a  
14 thirty-day period from a pharmacy, unless the person has a  
15 prescription for a pseudoephedrine product in excess of that  
16 quantity.

17 d. Any material, compound, mixture, or preparation which  
18 contains three hundred sixty milligrams or less of  
19 pseudoephedrine, its salts, optical isomers, and salts of its  
20 optical isomers, is excepted from this schedule and may be  
21 warehoused and sold by a distributor and may be sold over the  
22 counter by a retailer pursuant to section 126.23A.

23 Sec. 2. Section 126.23A, Code 2005, is amended by striking  
24 the section and inserting in lieu thereof the following:

25 126.23A PSEUDOEPHEDRINE -- RETAIL RESTRICTIONS.

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

31 2. A retailer shall sell and a purchaser shall only  
32 purchase pseudoephedrine products in the following manner:

33 a. A retailer or an employee of a retailer shall not  
34 knowingly sell to a person and a person shall not purchase in  
35 a twenty-four-hour period more than two packages of a product

1 containing pseudoephedrine.

2 b. A retailer or an employee of a retailer shall not sell  
3 a package containing pseudoephedrine if the package contains  
4 more than three hundred sixty milligrams of pseudoephedrine,  
5 unless the retailer is a pharmacy and the product is regulated  
6 and sold as a schedule V controlled substance under section  
7 124.212.

8 c. A retailer who offers for sale a product containing  
9 pseudoephedrine shall offer such product for sale in a locked  
10 cabinet or behind a sales counter where the public is unable  
11 to reach the product and where the public is not permitted.

12 d. A retailer or an employee of a retailer shall require a  
13 purchaser to present a government issued photo identification  
14 card identifying the purchaser prior to purchasing a product  
15 containing pseudoephedrine. A purchaser shall also sign a  
16 logbook prior to purchase and input the purchaser's name and  
17 address into the logbook. The retailer shall keep the logbook  
18 for a minimum period of two years from the date of any  
19 purchase. The logbook may be kept in an electronic format  
20 upon approval by the department of public safety.

21 e. A retailer shall provide notification in a clear and  
22 conspicuous manner in a location where a product containing  
23 pseudoephedrine is offered for sale stating the following:

24 Iowa law prohibits the purchase of more than two packages  
25 containing pseudoephedrine in a twenty-four-hour period unless  
26 the purchase is made through a pharmacist. If you purchase a  
27 product containing pseudoephedrine, you are required to sign a  
28 logbook which shall be accessible to law enforcement officers.

29 f. A purchaser shall not purchase more than six thousand  
30 milligrams of pseudoephedrine from a retailer within a thirty-  
31 day period.

32 3. a. A retailer shall, upon request by an authorized  
33 agent of the department of public safety, make accessible to  
34 the agent the records of the purchase, sale, or other  
35 disposition of pseudoephedrine products and also make

1 accessible inventory records of such products maintained in  
2 accordance with rules adopted by the department of public  
3 safety.

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

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

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

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

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

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

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

33 10. A purchaser who purchases more than six thousand  
34 milligrams of pseudoephedrine from a pharmacy under section  
35 124.212 or who purchases more than six thousand milligrams of

1 pseudoephedrine from a retailer under this section within a  
2 thirty day period, commits an aggravated misdemeanor.

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

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

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

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

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

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

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

28 3. The state or local authority that takes legal action  
29 against a retailer under this section shall report the  
30 assessment of a civil penalty to the department of public  
31 safety within thirty days of the penalty being assessed.

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

35 Sec. 4. Section 602.8105, subsection 4, Code 2005, is

1 amended to read as follows:

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

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

11 714.7C THEFT OF PSEUDOEPHEDRINE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33  
34  
35

**EIGHTY-FIRST GENERAL ASSEMBLY  
2005 REGULAR SESSION  
DAILY  
HOUSE CLIP SHEET**

FEBRUARY 22, 2005

**Fiscal Services Division  
Legislative Services Agency  
Fiscal Note**

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SF 169 - Methamphetamine Precursors (LSB 1123 SV.1)  
Analyst: Jennifer Acton (Phone: (515) 281-7846) (jennifer.acton@legis.state.ia.us)  
Fiscal Note Version – As Amended and Passed by the Senate

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**Description**

Senate File 169 as amended and passed by the Senate relates to the regulation of substances which are precursors to amphetamine and methamphetamine and provides penalties. The Bill restricts bail for persons charged with the manufacture, delivery, or possession with intent to deliver, or distribution of methamphetamine, by requiring offenders to be supervised and to undergo random drug tests as a condition of release on bail. The Sections of the Bill that make ephedrine and most pseudoephedrine products a Schedule V controlled substance take effect upon enactment.

**Assumptions**

1. A lag effect of six months is assumed from the law's effective date to the date of the first entry of affected offenders into the correctional system.
2. In FY 2004, there were approximately 1,950 arrests for manufacturing/distribution of methamphetamine. Of this amount, 500 people were charged with a meth-related offense and admitted to pre-trial release programs. The remaining people may remain in jail or be released by some other method, such as release on their own recognizance or by posting bail. Under the Bill, it is estimated that there may be approximately 875 to 1,450 new cases for pre-trial release with supervision.
3. Community-Based Corrections (CBC) staffing standards are one probation officer for every 60 people on pre-trial release.
4. The total cost for urinalysis testing is \$180 for each person based on a six-month average length of stay on supervision. This figure includes random testing at least four times a month over the six-month supervision period.
5. In calendar year 2004, there were approximately 1,500 meth labs seized by State and local law enforcement. Approximately 42.0% of these labs were seized by the State. Senate File 169 may reduce the number of labs seized by approximately 24.0% annually based on similar legislation enacted in other States.
6. In calendar year 2004, the total cost to clean up meth lab sites in Iowa was \$1.2 million (\$800 per site). This figure includes a mix of federal, State, and local funds. Approximately 40.0% of the Division of Narcotics Enforcement's budget is federal funds, which are anticipated to decline in future fiscal years.
7. There have been no convictions for any retail provisions concerning precursors or the enhanced penalties for theft of pseudoephedrine. The law took effect July 1, 2004.
8. The average State costs for one new simple misdemeanor conviction ranges from \$14 to \$270. The average State costs for one new serious misdemeanor conviction ranges from \$100 to \$4,000. The average State cost for one new aggravated misdemeanor conviction ranges from \$1,000 to \$5,700. The average State cost for one new Class C felony ranges from \$3,000 to \$23,000. The costs for any misdemeanor or felony above a simple misdemeanor may be incurred across multiple years while the offender is supervised in the correctional system.

### **Correctional Impact**

Senate File 169 as amended and passed by the Senate may result in approximately 875 to 1,450 additional people annually being supervised in CBC and required to undergo random drug testing.

### **Fiscal Impact**

The bail restrictions of SF169 as amended and passed by the Senate will impact CBC District Department budgets. Costs in FY 2006 are anticipated to range from approximately \$454,000 and 7.5 additional FTE positions to \$730,000 and 12.0 additional FTE positions (staff and testing supply costs). Annualized costs in FY 2007 are anticipated to range from approximately \$908,000 and 15.0 additional FTE positions to \$1.5 million and 24.0 additional FTE positions.

It is anticipated the costs of the new graduated scale of fines for the sale of pseudoephedrine and the enhanced penalties for theft of pseudoephedrine will not result in a significant fiscal impact.

Any State, federal, and local savings generated by a reduction in meth labs will be redirected to other drug interdiction efforts by State and local law enforcement. Any savings generated by the provisions of SF 169 as amended and passed by the Senate cannot be determined.

Under current law, there have been no civil penalty convictions. The law took effect July 1, 2004. Senate File 169 as amended and passed by the Senate defines a graduated scale of civil fines. It is anticipated there will be no additional civil penalty revenue generated from SF 169 as amended and passed by the Senate.

### **Sources**

Department of Human Rights, Criminal and Juvenile Justice Planning  
Department of Corrections  
Department of Public Safety  
Governor's Office of Drug Control Policy

/s/ Holly M. Lyons

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February 21, 2005

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The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

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**Fiscal Services Division**  
**Legislative Services Agency**  
**Fiscal Note**

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SF 169 - Methamphetamine Precursors (LSB 1123 SV.2)

Analyst: Jennifer Acton (Phone: (515) 281-7846) (jennifer.acton@legis.state.ia.us)

Fiscal Note Version – As Amended by H-1047

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**Description**

House Amendment H-1047 amends SF 169 by striking everything after the enacting clause. The Bill, as amended regulates substances that are precursors to amphetamine and methamphetamine including restricting the sale of pseudoephedrine to 7,500 milligrams (mg) from a pharmacy within a 30-day period. The Section of the Amendment that makes ephedrine a Schedule V controlled substance takes effect upon enactment.

**Assumptions**

1. A lag effect of six months is assumed from the law's effective date to the date of the first entry of affected offenders into the correctional system.
2. In FY 2004, there were approximately 1,950 arrests for manufacturing/distribution of methamphetamine.
3. In calendar year 2004, there were approximately 1,500 meth labs seized by State and local law enforcement. Approximately 42.0% of these labs were seized by the State.
4. In calendar year 2004, the cost to Division of Narcotics (DNE) to clean up a meth lab site in Iowa ranged from \$800 to \$1,200 per site, depending on the number of agents. This figure included a mix of federal and State funds. Approximately 40.0% of the Division of Narcotics Enforcement's budget is federal funds, which are anticipated to decline in future fiscal years.
5. The disposal costs for lab residue from the Division of Criminal Investigations Crime Lab is \$3,000 per quarter paid from DNE's allocation of the federal Community Orientated Policing Services (COPS) grant. Evidence from the Crime Lab is picked up after the analysis of exhibits has been completed and does not cover the costs of disposing of the lab materials not submitted as evidence.
6. During calendar years 2003 and 2004, the U.S. Drug Enforcement Administration (DEA) paid for just over \$1.2 million in disposal of materials collected in lab cleanups for the two years combined. This money was paid directly from the federal government to Enviro-solve, a hazardous material company out of Kansas City.

**Correctional Impact**

The correctional impact of Senate File 169 as amended by H-1047 cannot be determined; however, it is anticipated to be minimal.

**Fiscal Impact**

Any State, federal, and local savings generated by a reduction in meth labs will be redirected to other drug interdiction efforts by State and local law enforcement. Any savings generated by the provisions of SF 169 as amended by H-1047 cannot be determined.

Senate File 169 as amended by H-1047 establishes a serious misdemeanor for the purchase of more than 7,500 milligrams of pseudoephedrine in a 30-day period. The average State costs for one new serious misdemeanor conviction ranges from \$100 to \$4,000. The costs may be incurred across multiple years while the offender is supervised in the correctional system.

**Sources**

Department of Human Rights, Criminal and Juvenile Justice Planning Division  
Board of Pharmacy Examiners  
Department of Public Safety  
Governor's Office of Drug Control Policy

/s/ Holly M. Lyons

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March 8, 2005

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The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

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H-1047

1 Amend Senate File 169, as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. By striking everything after the enacting  
4 clause and inserting the following:

5 "Section 1. Section 124.212, subsection 4, Code  
6 2005, is amended by striking the subsection and  
7 inserting in lieu thereof the following:

8 4. PRECURSORS TO AMPHETAMINE AND METHAMPHETAMINE.

9 Unless specifically excepted in paragraph "d" or  
10 listed in another schedule, any material, compound,  
11 mixture, or preparation which contains any quantity of  
12 the following precursors to amphetamine or  
13 methamphetamine, including their salts, optical  
14 isomers, and salts of their optical isomers:

15 a. Ephedrine.

16 b. Phenylpropanolamine.

17 c. Pseudoephedrine. A person shall not purchase  
18 more than seven thousand five hundred milligrams of  
19 pseudoephedrine within a thirty-day period from a  
20 pharmacy, unless the person has a prescription for a  
21 pseudoephedrine product in excess of that quantity.

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

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

32 A person who purchases more than seven thousand  
33 five hundred milligrams of pseudoephedrine from a  
34 pharmacy in violation of section 124.212 within a  
35 thirty-day period commits a serious misdemeanor.

36 Sec. 3. Section 602.8105, subsection 4, Code 2005,  
37 is amended by striking the subsection.

38 Sec. 4. Section 805.8C, subsection 6, Code 2005,  
39 is amended by striking the subsection.

40 Sec. 5. PSEUDOEPHEDRINE -- PREEMPTION. A  
41 political subdivision of the state shall not adopt an  
42 ordinance regulating the display or sale of products  
43 containing pseudoephedrine. An ordinance adopted in  
44 violation of this section is void and unenforceable  
45 and any enforcement activity of an ordinance in  
46 violation of this section is void.

47 Sec. 6. DRUG POLICY COORDINATOR -- REPORT. The  
48 drug policy coordinator shall report, in a joint  
49 meeting, to the committee on judiciary of the senate  
50 and the committee on public safety of the house of

H-1047

**H-1047**

Page 2

1 representatives in January 2006 and in January 2007,  
2 the effects of this Act on methamphetamine abuse and  
3 related criminal activity.  
4 Sec. 7. Sections 126.23A and 714.7C, Code 2005,  
5 are repealed.  
6 Sec. 8. EFFECTIVE DATES. This Act takes effect  
7 sixty days from the date of enactment or July 1, 2005,  
8 whichever is earlier. However, the portion of the  
9 section of this Act amending section 124.212,  
10 subsection 4, which makes all ephedrine products  
11 schedule V controlled substances, takes effect upon  
12 enactment."

COMMITTEE ON PUBLIC SAFETY

BAUDLER of Adair, Chairperson

**H-1047** FILED MARCH 3, 2005

**SENATE FILE 169**

**H-1052**

1 Amend the amendment, H-1047, to Senate File 169, as  
2 amended, passed, and reprinted by the Senate, as  
3 follows:

4 1. Page 2, by inserting after line 5 the  
5 following:

6 "Sec. \_\_\_\_\_. The provisions of this Act are repealed  
7 on July 1, 2007, and the Code editor is instructed to  
8 restore the language in section 124.212, subsection 4,  
9 section 126.23A, section 602.8105, subsection 4,  
10 section 714.7C, and section 805.8C, subsection 6, to  
11 the language in the 2005 Code."

12 2. By renumbering as necessary.

**By** WATTS of Dallas

**H-1052** FILED MARCH 9, 2005

WITHDRAWN

**Fiscal Services Division**  
**Legislative Services Agency**  
**Fiscal Note**

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SF 169 - Methamphetamine Precursors (LSB 1123 SV.3)

Analyst: Jennifer Acton (Phone: (515) 281-7846) (jennifer.acton@legis.state.ia.us)

Fiscal Note Version – As Amended by the Conference Committee Report

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**Description**

Senate File 169, as amended by the Conference Committee Report, relates to the regulation of substances which are precursors to amphetamine and methamphetamine and provides penalties. The Bill restricts bail for persons charged with the manufacture, delivery, or possession with intent to deliver, or distribution of methamphetamine, by requiring offenders to be supervised and to undergo random drug tests as a condition of release on bail. This provision takes effect upon enactment. The Section of the Bill that makes ephedrine a Schedule V controlled substance also takes effect upon enactment.

**Assumptions**

1. In FY 2004, there were approximately 1,950 arrests for manufacturing/distribution of methamphetamine. Of this amount, 500 people were charged with a meth-related offense and admitted to pre-trial release programs. The remaining 1,450 defendants may remain in jail or be released by some other method, such as released on their own recognizance or by posting bail. Under this Bill, it is assumed the 1,450 defendants will remain in jail until their initial appearance and there will be 1,450 new cases for pre-trial release with supervision.
2. Community-Based Corrections (CBC) staffing standards are one probation officer for every 60 people on pre-trial release.
3. The total cost for urinalysis testing is \$180 for each person based on a six-month average length of stay on supervision. This figure includes random testing at least four times a month over the six-month supervision period.
4. In calendar year 2004, there were approximately 1,500 meth labs seized by State and local law enforcement. Approximately 42.0% of these labs were seized by the State. It is estimated that Senate File 169, as amended by the Conference Committee Report, may reduce the total number of labs seized in Iowa by 24.0% to 48.0% annually based on similar legislation enacted in other States.
5. In calendar year 2004, the cost to Division of Narcotics Enforcement (DNE) to clean up a meth lab site in Iowa ranged from \$800 to \$1,200 per site, depending on the number of agents. This figure includes a mix of federal and State funds. Approximately 40.0% of the Division of Narcotics Enforcement's budget is federal funds, which are anticipated to decline in future fiscal years.
6. The disposal costs for lab residue from the Division of Criminal Investigations Crime Lab is \$3,000 per quarter and is paid from DNE's allocation of the federal Community Orientated Policing Services (COPS) grant. Evidence from the Crime Lab is picked up after the analysis of exhibits has been completed. The \$3,000 estimate does not cover the costs of disposing of the lab materials not submitted as evidence.
7. There have been no convictions for any retail provisions concerning precursors or the enhanced penalties for theft of pseudoephedrine. The law took effect July 1, 2004.
8. The average State costs for one new serious misdemeanor conviction ranges from \$100 to \$4,000. The costs may be incurred across multiple years while the offender is supervised in the correctional system.
9. Iowa Rule of Criminal Procedure 2.1 and 2.2 requires a defendant in custody to go before a Magistrate without delay; this is assumed to be within 24 hours.

### Correctional Impact

Senate File 169, as amended by the Conference Committee Report, may result in approximately 1,450 additional people annually being supervised in CBC and required to undergo random drug testing. Additionally, there may be an impact on county jail overcrowding. If all 1,450 additional offenders remain in jail for a 24-hour period, the impact would be approximately \$22,000 for county jail operations.

### Fiscal Impact

The bail restrictions of SF169, as amended by the Conference Committee Report, will impact CBC District Department budgets. Costs in FY 2005 are anticipated to be \$375,000 and 6.0 FTE positions for probation officers (staff and testing supply costs). Costs in FY 2006 are anticipated to be \$1.5 million and 24.0 additional FTE positions (staff and testing supply costs) on an annual basis.

It is anticipated the costs of the enhanced penalty from a simple misdemeanor to a serious misdemeanor for theft of pseudoephedrine will not result in a significant fiscal impact.

Under current law, there have been no civil penalty convictions. The law took effect July 1, 2004. Senate File 169, as amended by the Conference Committee Report, defines a graduated scale of civil fines. It is anticipated there will be no additional civil penalty revenue generated from SF 169.

Any savings generated by the provisions of SF 169 as amended by the Conference Committee Report cannot be determined. There may be other savings to local and State government as a result of a reduction in meth labs and meth usage in Iowa, but there is insufficient data to quantify such savings. State, federal, and local savings generated by a reduction in meth labs may be redirected to other drug interdiction efforts by State and local law enforcement.

### Sources

Department of Human Rights, Criminal and Juvenile Justice Planning Division  
Department of Corrections  
Department of Public Safety  
Governor's Office of Drug Control Policy

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/s/ Holly M. Lyons

March 16, 2005

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The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

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**EIGHTY FIRST GENERAL ASSEMBLY  
2005 REGULAR SESSION  
DAILY  
SENATE CLIP SHEET**

MARCH 14, 2005

**HOUSE AMENDMENT TO  
SENATE FILE 169**

**S-3015**

1 Amend Senate File 169, as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. By striking everything after the enacting  
4 clause and inserting the following:

5 "Section 1. Section 124.212, subsection 4, Code  
6 2005, is amended by striking the subsection and  
7 inserting in lieu thereof the following:

8 4. PRECURSORS TO AMPHETAMINE AND METHAMPHETAMINE.

9 Unless specifically excepted in paragraph "d" or  
10 listed in another schedule, any material, compound,  
11 mixture, or preparation which contains any quantity of  
12 the following precursors to amphetamine or  
13 methamphetamine, including their salts, optical  
14 isomers, and salts of their optical isomers:

15 a. Ephedrine.

16 b. Phenylpropanolamine.

17 c. Pseudoephedrine. A person shall not purchase  
18 more than seven thousand five hundred milligrams of  
19 pseudoephedrine within a thirty-day period from a  
20 pharmacy, unless the person has a prescription for a  
21 pseudoephedrine product in excess of that quantity.

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

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

32 A person who purchases more than seven thousand  
33 five hundred milligrams of pseudoephedrine from a  
34 pharmacy in violation of section 124.212 within a  
35 thirty-day period commits a serious misdemeanor.

36 Sec. 3. Section 602.8105, subsection 4, Code 2005,  
37 is amended by striking the subsection.

38 Sec. 4. Section 805.8C, subsection 6, Code 2005,  
39 is amended by striking the subsection.

40 Sec. 5. PSEUDOEPHEDRINE -- PREEMPTION. A  
41 political subdivision of the state shall not adopt an  
42 ordinance regulating the display or sale of products  
43 containing pseudoephedrine. An ordinance adopted in  
44 violation of this section is void and unenforceable  
45 and any enforcement activity of an ordinance in  
46 violation of this section is void.

47 Sec. 6. DRUG POLICY COORDINATOR -- REPORT. The  
48 drug policy coordinator shall report, in a joint  
49 meeting, to the committee on judiciary of the senate  
50 and the committee on public safety of the house of

**S-3015**

**S-3015**

Page 2

1 representatives in January 2006 and in January 2007,  
2 the effects of this Act on methamphetamine abuse and  
3 related criminal activity.

4 Sec. 7. Sections 126.23A and 714.7C, Code 2005,  
5 are repealed.

6 Sec. 8. EFFECTIVE DATES. This Act takes effect  
7 sixty days from the date of enactment or July 1, 2005,  
8 whichever is earlier. However, the portion of the  
9 section of this Act amending section 124.212,  
10 subsection 4, which makes all ephedrine products  
11 schedule V controlled substances, takes effect upon  
12 enactment."

RECEIVED FROM THE HOUSE

**S-3015** FILED MARCH 10, 2005

REFUSED TO CONCUR

REPORT OF THE CONFERENCE COMMITTEE  
ON SENATE FILE 169

To the Co-Presidents of the Senate and the Speaker of the House of Representatives:

We, the undersigned members of the conference committee appointed to resolve the differences between the Senate and House of Representatives on Senate File 169, a bill for an Act relating to the regulation of substances which are precursors to amphetamine and methamphetamine and providing a penalty and effective dates, respectfully make the following report:

1. That the House recedes from its amendment, S-3015.
2. That Senate File 169, as amended, passed, and reprinted by the Senate, is amended to read as follows:

1. By striking everything after the enacting clause and inserting the following:

"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,~~ 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~~ 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

**ON THE PART OF THE SENATE:**

BOB BRUNKHORST, Co-Chairperson  
KEITH KREIMAN, Co-Chairperson  
TOM HANCOCK  
DAVID MILLER  
STEVE WARNSTADT  
BRAD ZAUN

**ON THE PART OF THE HOUSE:**

CLEL BAUDLER, Chairperson  
CECIL DOLECHECK  
JIM LYKAM  
KEVIN MCCARTHY  
TOM SANDS

REPORT OF THE CONFERENCE COMMITTEE  
ON SENATE FILE 169

To the Co-Presidents of the Senate and the Speaker of the House of Representatives:

We, the undersigned members of the conference committee appointed to resolve the differences between the Senate and House of Representatives on Senate File 169, a bill for an Act relating to the regulation of substances which are precursors to amphetamine and methamphetamine and providing a penalty and effective dates, respectfully make the following report:

1. That the House recedes from its amendment, S-3015.
2. That Senate File 169, as amended, passed, and reprinted by the Senate, is amended to read as follows:

1. By striking everything after the enacting clause and inserting the following:

"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."

**ON THE PART OF THE SENATE:**

BOB BRUNKHORST, Co-Chairperson  
KEITH KREIMAN, Co-Chairperson  
TOM HANCOCK  
DAVID MILLER  
STEVE WARNSTADT  
BRAD ZAUN

**ON THE PART OF THE HOUSE:**

CLEL BAUDLER, Chairperson  
CECIL DOLECHECK  
JIM LYKAM  
KEVIN MCCARTHY  
TOM SANDS

**CCS 169**  
ADOPTED

FILED MARCH 16, 2005

Brunkhorst Co-Chair  
Kreiman Co-Chair  
Zawn  
Wamstadt

Succeeded By  
S.F./H.F. 169

SSB# 1025  
Judiciary

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED GOVERNOR'S OFFICE  
OF DRUG CONTROL POLICY BILL)

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.

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

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

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

- 10 a. Ephedrine.
- 11 b. Phenylpropanolamine.
- 12 c. Pseudoephedrine.

13 Sec. 2. Section 602.8105, subsection 4, Code 2005, is  
14 amended by striking the subsection.

15 Sec. 3. Section 805.8C, subsection 6, Code 2005, is  
16 amended by striking the subsection.

17 Sec. 4. Sections 126.23A and 714.7C, Code 2005, are  
18 repealed.

19 EXPLANATION

20 This bill makes precursor substances to amphetamine and  
21 methamphetamine schedule V controlled substances.

22 The bill makes any product containing ephedrine,  
23 phenylpropanolamine, or pseudoephedrine, a schedule V  
24 controlled substance. This provision would include any  
25 dietary supplement containing naturally occurring ephedrine.

26 Iowa administrative code rule 657-10.31 establishes the  
27 rules for dispensing a schedule V controlled substance. The  
28 rule limits the amount and frequency of purchase, requires the  
29 purchaser be at least 18 years of age, and requires  
30 presentation of identification and a signature before  
31 purchase. A schedule V controlled substance does not require  
32 a prescription, but is not to be distributed other than for a  
33 medical purpose. The distribution of a schedule V substance  
34 is regulated by pharmacists, and schedule V substances must be  
35 kept off public access shelves.

1 Any criminal offense related to a schedule V controlled  
2 substance is punishable as an aggravated misdemeanor pursuant  
3 to Code section 124.401(1)(d).

4 Code sections 126.23A, relating to restrictions on the sale  
5 and purchase of pseudoephedrine products, and 714.7C,  
6 providing an enhanced penalty for the theft of a  
7 pseudoephedrine product, are repealed because all  
8 pseudoephedrine products will no longer be sold over the  
9 counter on a retail basis under the bill.

10 Current law does not regulate dietary supplements  
11 containing naturally occurring ephedrine, some products  
12 containing ephedrine, and all products containing  
13 phenylpropanolamine. Current law does limit the sale and  
14 purchase of some pseudoephedrine products to two packages per  
15 transaction at a retail establishment.

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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.

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JEFFREY M. LAMBERTI  
President of the Senate

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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.

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MICHAEL E. MARSHALL  
Secretary of the Senate

Approved 3/22, 2005

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THOMAS J. VILSACK  
Governor