A bill for an act

relating to public safety; requiring pharmacies to provide certain drug purchase information to law enforcement; amending Minnesota Statutes 2008, section 152.02, subdivision 6.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 152.02, subdivision 6, is amended to read:

Subd. 6. **Schedule V; restrictions on methamphetamine precursor drugs.** (a) As used in this subdivision, the following terms have the meanings given:

(1) "methamphetamine precursor drug" means any compound, mixture, or preparation intended for human consumption containing ephedrine or pseudoephedrine as its sole active ingredient or as one of its active ingredients; and

(2) "over-the-counter sale" means a retail sale of a drug or product but does not include the sale of a drug or product pursuant to the terms of a valid prescription.

(b) The following items are listed in Schedule V:

(1) any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(i) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(ii) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(iii) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit; or

(iv) not more than 15 milligrams of anhydrous morphine per 100 milliliters or per 100 grams; and

(2) any compound, mixture, or preparation containing ephedrine or pseudoephedrine as its sole active ingredient or as one of its active ingredients.

(c) No person may sell in a single over-the-counter sale more than two packages of a methamphetamine precursor drug or a combination of methamphetamine precursor drugs or any combination of packages exceeding a total weight of six grams.

(d) Over-the-counter sales of methamphetamine precursor drugs are limited to:

(1) packages containing not more than a total of three grams of one or more methamphetamine precursor drugs, calculated in terms of ephedrine base or pseudoephedrine base; or

(2) for nonliquid products, sales in blister packs, where each blister contains not more than two dosage units, or, if the use of blister packs is not technically feasible, sales in unit dose packets or pouches.

(e) A business establishment that offers for sale methamphetamine precursor drugs in an over-the-counter sale shall ensure that all packages of the drugs are displayed behind a checkout counter where the public is not permitted and are offered for sale only by a licensed pharmacist, a registered pharmacy technician, or a pharmacy clerk. The establishment shall ensure that the person making the sale requires the buyer:

(1) to provide photographic identification showing the buyer's date of birth; and

(2) to sign a written or electronic document detailing the date of the sale, the name of the buyer, and the amount of the drug sold. Nothing in this paragraph requires the buyer to obtain a prescription for the drug's purchase.

(f) A business establishment that offers for sale methamphetamine precursor drugs in an over-the-counter sale shall keep a record of purchases of methamphetamine precursor drugs, including the name of the buyer and the amount sold, and shall make that record available to law enforcement upon request. The record shall be kept for five years from the date of purchase. A business establishment, pharmacist, or employee of the business establishment who makes the record available to law enforcement is immune from any liability arising out of releasing that information.

~~(f)~~ (g) No person may acquire through over-the-counter sales more than six grams of methamphetamine precursor drugs within a 30-day period.

~~(g)~~ (h) No person may sell in an over-the-counter sale a methamphetamine precursor drug to a person under the age of 18 years. It is an affirmative defense to a charge under this paragraph if the defendant proves by a preponderance of the evidence that the

defendant reasonably and in good faith relied on proof of age as described in section 340A.503, subdivision 6.

~~(h)~~ (i) A person who knowingly violates paragraph (c), (d), (e), ~~(f), or~~ (g), or (h) is guilty of a misdemeanor and may be sentenced to imprisonment for not more than 90 days, or to payment of a fine of not more than $1,000, or both.

~~(i)~~ (j) An owner, operator, supervisor, or manager of a business establishment that offers for sale methamphetamine precursor drugs whose employee or agent is convicted of or charged with violating paragraph (c), (d), (e), ~~(f), or~~ (g), or (h) is not subject to the criminal penalties for violating any of those paragraphs if the person:

(1) did not have prior knowledge of, participate in, or direct the employee or agent to commit the violation; and

(2) documents that an employee training program was in place to provide the employee or agent with information on the state and federal laws and regulations regarding methamphetamine precursor drugs.

~~(j)~~ (k) Any person employed by a business establishment that offers for sale methamphetamine precursor drugs who sells such a drug to any person in a suspicious transaction shall report the transaction to the owner, supervisor, or manager of the establishment. The owner, supervisor, or manager may report the transaction to local law enforcement. A person who reports information under this subdivision in good faith is immune from civil liability relating to the report.

~~(k)~~ (l) Paragraphs (b) to ~~(j)~~ (k) do not apply to:

(1) pediatric products labeled pursuant to federal regulation primarily intended for administration to children under 12 years of age according to label instructions;

(2) methamphetamine precursor drugs that are certified by the Board of Pharmacy as being manufactured in a manner that prevents the drug from being used to manufacture methamphetamine;

(3) methamphetamine precursor drugs in gel capsule or liquid form; or

(4) compounds, mixtures, or preparations in powder form where pseudoephedrine constitutes less than one percent of its total weight and is not its sole active ingredient.

~~(l)~~ (m) The Board of Pharmacy, in consultation with the Department of Public Safety, shall certify methamphetamine precursor drugs that meet the requirements of paragraph ~~(k)~~ (l), clause (2), and publish an annual listing of these drugs.

~~(m)~~ (n) Wholesale drug distributors licensed and regulated by the Board of Pharmacy pursuant to sections 151.42 to 151.51 and registered with and regulated by the United States Drug Enforcement Administration are exempt from the methamphetamine precursor drug storage requirements of this section.

~~(n)~~ (o) This section preempts all local ordinances or regulations governing the sale by a business establishment of over-the-counter products containing ephedrine or pseudoephedrine. All ordinances enacted prior to the effective date of this act are void.