

## HOUSE BILL No. 1100

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DIGEST OF HB 1100 (Updated February 2, 1998 6:38 pm - DI 93)

**Citations Affected:** IC 16-42; IC 25-26; IC 35-48.

**Synopsis:** Ephedrine regulation. Prohibits the dispensation of a product containing ephedrine without a prescription unless (1) the product may be sold over the counter without a prescription under the federal food, drug, and cosmetic act; (2) the product is labeled and marketed in a manner consistent with the pertinent over the counter tentative final or final monograph; and (3) the product is manufactured and distributed for medical use in a manner that reduces the likelihood of abuse. Prohibits the marketing, labeling, or advertisement of ephedrine products in a manner that suggests stimulation, mental alertness, weight loss, appetite control, or energy. Specifies factors to be considered by the Indiana board of pharmacy in determining whether a product is manufactured, labeled, or marketed in a prohibited manner. Requires a court to assess a fee for conviction of certain offenses related to controlled substances to cover the costs of an environmental  
(Continued next page)

**Effective:** July 1, 1998.

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**Mahern, Kruse**

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January 6, 1998, read first time and referred to Committee on Public Health.  
January 28, 1998, amended, reported — Do Pass.  
February 2, 1998, read second time, amended, ordered engrossed.

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HB 1100—LS 6294/DI 93



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cleanup incurred by a law enforcement agency as a result of the offense. Provides that a person who (1) possesses ephedrine or a related substance with the intent to manufacture or (2) sells, distributes, or otherwise supplies ephedrine or a related substance to an individual with knowledge that the individual intends to manufacture certain controlled substances commits a Class C felony.

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Reprinted  
February 3, 1998

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

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## HOUSE BILL No. 1100

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A BILL FOR AN ACT to amend the Indiana Code concerning health.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 16-42-25 IS ADDED TO THE INDIANA CODE  
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 1998]:

4 **Chapter 25. Drugs: Ephedrine Products**  
5 **Sec. 1. As used in this chapter, "ephedrine" means the**  
6 **following:**

- 7 (1) Ephedrine.  
8 (2) A salt of ephedrine.

9 **Sec. 2. Except as provided in section 3 of this chapter, a product**  
10 **that contains ephedrine as its only active ingredient may only be**  
11 **dispensed with a prescription from a licensed physician or an**  
12 **advanced practice nurse authorized to prescribe legend drugs**  
13 **under IC 25-23-1-19.5.**

14 **Sec. 3. Except as provided in section 4 of this chapter, a product**  
15 **that contains ephedrine may be sold without a prescription if the**

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**product meets the following requirements:**

- (1) The product may be sold over the counter without a prescription under the federal Food, Drug, and Cosmetic Act.**
- (2) The product is labeled and marketed in a manner consistent with the pertinent Over the Counter (OTC) Tentative Final or Final Monograph.**
- (3) The product is manufactured and distributed for medical use in a manner that reduces the likelihood of abuse.**

**Sec. 4. (a) A product that contains ephedrine may not be marketed, advertised, or labeled for indications of stimulation, mental alertness, weight loss, appetite control, or energy.**

**(b) To determine compliance with this section, the Indiana board of pharmacy may consider the following factors:**

- (1) The packaging of the product.**
- (2) The name and labeling of the product.**
- (3) The manner of distribution, advertising, and promotion of the product.**
- (4) Verbal representations made concerning the product.**
- (5) The duration, scope, and significance of abuse or misuse of the particular product.**

**Sec. 5. A person who knowingly or intentionally violates this chapter commits a Class B misdemeanor.**

**SECTION 2. IC 25-26-13-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 29. (a) It is unlawful:**

- (1) For any person to display or permit to be displayed, a pharmacy permit in any facility or place of business other than that for which it was issued.**
- (2) For any person to accept a prescription for filling or compounding at any place or facility for which there is not a valid pharmacy permit.**
- (3) For any person to operate a pharmacy or to take, assume, exhibit, display, or advertise by any medium, the title "drugs", "prescriptions", "medicine", "drug store", "pharmacy", or "apothecary shop", or any combination of such titles or any other title, symbol, term, or description of like import intended to cause the public to believe that it is a pharmacy unless he holds a valid pharmacy permit.**
- (4) For any person to engage or offer to engage in the practice of pharmacy or to hold himself out as a pharmacist without a valid pharmacist's license that is classified as active by the board.**

**(b) A person who violates a provision of subsection (a) of this section commits a Class D felony.**

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1 (c) **Except as provided in IC 16-42-25-4**, nothing in this chapter  
 2 shall apply to, nor in any manner interfere with the business of a  
 3 general merchant in selling and distributing nonnarcotic,  
 4 nonprescription medicines or drugs which are prepackaged, fully  
 5 prepared by the manufacturer for use by the consumer, and labeled in  
 6 accordance with the requirements of the state and federal food and drug  
 7 acts.

8 SECTION 3. IC 35-48-4-4.6 IS AMENDED TO READ AS  
 9 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4.6. (a) A person who  
 10 knowingly or intentionally:

- 11 (1) manufactures;
- 12 (2) finances the manufacture of;
- 13 (3) advertises;
- 14 (4) distributes; or
- 15 (5) possesses with intent to manufacture, finance the manufacture  
 16 of, advertise, or distribute;

17 a substance described in section 4.5 of this chapter commits a Class C  
 18 felony.

19 (b) A person who knowingly or intentionally possesses a substance  
 20 described in section 4.5 of this chapter commits a Class C  
 21 misdemeanor. However, the offense is a Class A misdemeanor if the  
 22 person has a previous conviction under this section.

23 (c) In any prosecution brought under this section it is not a defense  
 24 that the person believed the substance actually was a controlled  
 25 substance.

26 (d) This section does not apply to the following:

- 27 (1) The manufacture, financing the manufacture of, processing,  
 28 packaging, distribution, or sale of noncontrolled substances to  
 29 licensed medical practitioners for use as placebos in professional  
 30 practice or research.
- 31 (2) Persons acting in the course and legitimate scope of their  
 32 employment as law enforcement officers.
- 33 (3) The retention of production samples of noncontrolled  
 34 substances produced before September 1, 1986, where such  
 35 samples are required by federal law.

36 (e) **In addition to any other fee imposed for conviction of an**  
 37 **offense under this section, a court shall assess a fee against the**  
 38 **defendant to cover the costs of an environmental cleanup incurred**  
 39 **by a law enforcement agency as a result of the offense.**

40 (f) **The fee collected under subsection (e) must be used to**  
 41 **reimburse the law enforcement agency that assumed the costs**  
 42 **associated with an environmental cleanup described in subsection**

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1 (e).

2 SECTION 4. IC 35-48-4-16 IS ADDED TO THE INDIANA CODE  
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
4 1, 1998]: **Sec. 16. A person who knowingly or intentionally:**

5 (1) possesses ephedrine or pseudoephedrine or their salts or  
6 isomers with intent to manufacture; or

7 (2) sells, distributes, or otherwise supplies ephedrine or  
8 pseudoephedrine or their salts or isomers with knowledge that  
9 the recipient intends to use the substance to manufacture;

10 methcathinone, a schedule I controlled substance under  
11 IC 35-48-2-4, methamphetamine, a schedule II controlled  
12 substance under IC 35-48-2-6, amphetamine, a schedule II  
13 controlled substance under IC 35-48-2-6, or phentermine, a  
14 schedule IV controlled substance under IC 35-48-2-10, commits a  
15 Class C felony.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1100, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 25, delete "Hydrochloride" and insert "**More than twenty (20) milligrams of hydrochloride**".

Page 3, line 23, delete "To" and insert "**The Indiana board of pharmacy shall adopt rules under IC 4-22-2 that include standards to**".

Page 3, line 23, delete ", the" and insert ". **The**".

Page 3, line 24, after "factors" insert "**when adopting rules under this section**".

Page 3, between lines 33 and 34, begin a new paragraph and insert: "SECTION 2. IC 25-26-13-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 29. (a) It is unlawful:

(1) For any person to display or permit to be displayed, a pharmacy permit in any facility or place of business other than that for which it was issued.

(2) For any person to accept a prescription for filling or compounding at any place or facility for which there is not a valid pharmacy permit.

(3) For any person to operate a pharmacy or to take, assume, exhibit, display, or advertise by any medium, the title "drugs", "prescriptions", "medicine", "drug store", "pharmacy", or "apothecary shop", or any combination of such titles or any other title, symbol, term, or description of like import intended to cause the public to believe that it is a pharmacy unless he holds a valid pharmacy permit.

(4) For any person to engage or offer to engage in the practice of pharmacy or to hold himself out as a pharmacist without a valid pharmacist's license that is classified as active by the board.

(b) A person who violates a provision of subsection (a) of this section commits a Class D felony.

(c) **Except as provided in IC 16-42-25-4**, nothing in this chapter shall apply to, nor in any manner interfere with the business of a general merchant in selling and distributing nonnarcotic, nonprescription medicines or drugs which are prepackaged, fully prepared by the manufacturer for use by the consumer, and labeled in accordance with the requirements of the state and federal food and drug acts."

Page 4, line 39, delete "Class D felony" and insert "**Class C felony**".

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Renumber all SECTIONS consecutively.  
and when so amended that said bill do pass.

(Reference is to House Bill 1100 as introduced.)

C. BROWN, Chair

Committee Vote: yeas 8, nays 5.

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## HOUSE MOTION

Mr. Speaker: I move that House Bill 1100 be amended to read as follows:

Page 1, after line 3, insert:

**"Chapter 25. Drugs: Ephedrine Products**

**Sec. 1. As used in this chapter, "ephedrine" means the following:**

- (1) Ephedrine.
- (2) A salt of ephedrine.

**Sec. 2. Except as provided in section 3 of this chapter, a product that contains ephedrine as its only active ingredient may only be dispensed with a prescription from a licensed physician or an advanced practice nurse authorized to prescribe legend drugs under IC 25-23-1-19.5.**

**Sec. 3. Except as provided in section 4 of this chapter, a product that contains ephedrine may be sold without a prescription if the product meets the following requirements:**

- (1) The product may be sold over the counter without a prescription under the federal Food, Drug, and Cosmetic Act.
- (2) The product is labeled and marketed in a manner consistent with the pertinent Over the Counter (OTC) Tentative Final or Final Monograph.
- (3) The product is manufactured and distributed for medical use in a manner that reduces the likelihood of abuse.

**Sec. 4. (a) A product that contains ephedrine may not be marketed, advertised, or labeled for indications of stimulation, mental alertness, weight loss, appetite control, or energy.**

**(b) To determine compliance with this section, the Indiana board of pharmacy may consider the following factors:**

- (1) The packaging of the product.
- (2) The name and labeling of the product.
- (3) The manner of distribution, advertising, and promotion of the product.
- (4) Verbal representations made concerning the product.
- (5) The duration, scope, and significance of abuse or misuse of the particular product."

Page 1, delete lines 4 through 15.

Delete page 2.

Page 3, delete lines 1 through 36.

(Reference is to House Bill 1100 as printed January 29, 1998.)

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