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# SENATE BILL No. 488

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-34-1-5.5; IC 25-26-13-4; IC 34-30-2-70.5.

**Synopsis:** Dispensing of drugs by pharmacists. Provides that a pharmacist may not be required to dispense or sell a drug or medical device if the drug or medical device would be used to: (1) cause an abortion; or (2) cause the death of a person by means of assisted suicide, euthanasia, or mercy killing. Specifies certain actions that a pharmacist must take when refusing to dispense a drug or medical device. States that a pharmacy must have a policy in place to dispense or sell a drug or medical device that a pharmacist refuses to dispense or sell. Specifies that a pharmacist's refusal to dispense or sell a drug or medical device may not be the basis for: (1) a claim of damages against the pharmacist or pharmacy; and (2) disciplinary action against the pharmacist. Provides that a pharmacist has a cause of action against an employer who knowingly or intentionally takes disciplinary, recriminatory, or discriminatory action against a pharmacist who refuses to dispense or sell a drug or medical device and specifies recovery. Authorizes the Indiana board of pharmacy to assess additional fines against the employer.

**Effective:** July 1, 2011.

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**Steele, Kruse**

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January 13, 2011, read first time and referred to Committee on Health and Provider Services.

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First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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## SENATE BILL No. 488



A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

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

1 SECTION 1. IC 16-34-1-5.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2011]: **Sec. 5.5. (a) A pharmacist may not be required to dispense  
4 or sell a drug or medical device if the pharmacist believes that the  
5 drug or medical device would be used to:**  
6 **(1) cause an abortion; or**  
7 **(2) cause the death of a person by means of assisting suicide**  
8 **(IC 35-42-1-2.5), euthanasia, or mercy killing.**  
9 **However, before a pharmacist refuses to dispense a drug or**  
10 **medical device under subdivision (2), the pharmacist shall contact**  
11 **the prescribing physician to clarify the clinical condition of the**  
12 **patient and the appropriateness of the prescribed drug or medical**  
13 **device.**  
14 **(b) If a pharmacist refuses to dispense or sell a drug or medical**  
15 **device under subsection (a)(1), the pharmacy where the pharmacist**  
16 **is employed shall have a policy in place to dispense or sell the drug**  
17 **or medical device.**



1 (c) A pharmacist's refusal under this section to dispense or sell  
 2 a drug or medical device may not be the basis for:  
 3 (1) a claim for damages against the pharmacist or the  
 4 pharmacy where the pharmacist is employed; or  
 5 (2) disciplinary, recriminatory, or discriminatory action  
 6 against the pharmacist by the employer.  
 7 (d) A pharmacist may bring an action against the pharmacist's  
 8 employer if the pharmacist refused to dispense or sell a drug or  
 9 medical device under subsection (a) and the pharmacist suffered  
 10 damages as a result of the employer's knowing or intentional  
 11 disciplinary, recriminatory, or discriminatory action against the  
 12 pharmacist. A pharmacist who prevails in an action under this  
 13 subsection may recover the following:  
 14 (1) Actual damages.  
 15 (2) Punitive damages.  
 16 (3) Costs.  
 17 (4) Attorney's fees.  
 18 (e) If a pharmacist prevails in an action under subsection (d),  
 19 the Indiana board of pharmacy may assess against the employer a  
 20 fine of not more than five thousand dollars (\$5,000) for a first  
 21 offense and a fine of not more than ten thousand dollars (\$10,000)  
 22 for a second or subsequent offense. A fine assessed under this  
 23 subsection is in addition to any recovery found under subsection  
 24 (d).  
 25 SECTION 2. IC 25-26-13-4, AS AMENDED BY P.L.182-2009(ss),  
 26 SECTION 371, IS AMENDED TO READ AS FOLLOWS  
 27 [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) The board may:  
 28 (1) promulgate rules and regulations under IC 4-22-2 for  
 29 implementing and enforcing this chapter;  
 30 (2) establish requirements and tests to determine the moral,  
 31 physical, intellectual, educational, scientific, technical, and  
 32 professional qualifications for applicants for pharmacists'  
 33 licenses;  
 34 (3) refuse to issue, deny, suspend, or revoke a license or permit ~~or~~  
 35 **under this chapter**, place on probation or fine any licensee or  
 36 permittee under this chapter, **or fine an employer under**  
 37 **IC 16-34-1-5.5;**  
 38 (4) regulate the sale of drugs and devices in the state of Indiana;  
 39 (5) impound, embargo, confiscate, or otherwise prevent from  
 40 disposition any drugs, medicines, chemicals, poisons, or devices  
 41 which by inspection are deemed unfit for use or would be  
 42 dangerous to the health and welfare of the citizens of the state of

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1 Indiana; the board shall follow those embargo procedures found  
 2 in IC 16-42-1-18 through IC 16-42-1-31, and persons may not  
 3 refuse to permit or otherwise prevent members of the board or  
 4 their representatives from entering such places and making such  
 5 inspections;  
 6 (6) prescribe minimum standards with respect to physical  
 7 characteristics of pharmacies, as may be necessary to the  
 8 maintenance of professional surroundings and to the protection of  
 9 the safety and welfare of the public;  
 10 (7) subject to IC 25-1-7, investigate complaints, subpoena  
 11 witnesses, schedule and conduct hearings on behalf of the public  
 12 interest on any matter under the jurisdiction of the board;  
 13 (8) prescribe the time, place, method, manner, scope, and subjects  
 14 of licensing examinations which shall be given at least twice  
 15 annually; and  
 16 (9) perform such other duties and functions and exercise such  
 17 other powers as may be necessary to implement and enforce this  
 18 chapter.  
 19 (b) The board shall adopt rules under IC 4-22-2 for the following:  
 20 (1) Establishing standards for the competent practice of  
 21 pharmacy.  
 22 (2) Establishing the standards for a pharmacist to counsel  
 23 individuals regarding the proper use of drugs.  
 24 (3) Establishing standards and procedures before January 1, 2006,  
 25 to ensure that a pharmacist:  
 26 (A) has entered into a contract that accepts the return of  
 27 expired drugs with; or  
 28 (B) is subject to a policy that accepts the return of expired  
 29 drugs of;  
 30 a wholesaler, manufacturer, or agent of a wholesaler or  
 31 manufacturer concerning the return by the pharmacist to the  
 32 wholesaler, the manufacturer, or the agent of expired legend drugs  
 33 or controlled drugs. In determining the standards and procedures,  
 34 the board may not interfere with negotiated terms related to cost,  
 35 expenses, or reimbursement charges contained in contracts  
 36 between parties, but may consider what is a reasonable quantity  
 37 of a drug to be purchased by a pharmacy. The standards and  
 38 procedures do not apply to vaccines that prevent influenza,  
 39 medicine used for the treatment of malignant hyperthermia, and  
 40 other drugs determined by the board to not be subject to a return  
 41 policy. An agent of a wholesaler or manufacturer must be  
 42 appointed in writing and have policies, personnel, and facilities

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- 1 to handle properly returns of expired legend drugs and controlled
- 2 substances.
- 3 (c) The board may grant or deny a temporary variance to a rule it
- 4 has adopted if:
  - 5 (1) the board has adopted rules which set forth the procedures and
  - 6 standards governing the grant or denial of a temporary variance;
  - 7 and
  - 8 (2) the board sets forth in writing the reasons for a grant or denial
  - 9 of a temporary variance.
- 10 (d) The board shall adopt rules and procedures, in consultation with
- 11 the medical licensing board, concerning the electronic transmission of
- 12 prescriptions. The rules adopted under this subsection must address the
- 13 following:
  - 14 (1) Privacy protection for the practitioner and the practitioner's
  - 15 patient.
  - 16 (2) Security of the electronic transmission.
  - 17 (3) A process for approving electronic data intermediaries for the
  - 18 electronic transmission of prescriptions.
  - 19 (4) Use of a practitioner's United States Drug Enforcement
  - 20 Agency registration number.
  - 21 (5) Protection of the practitioner from identity theft or fraudulent
  - 22 use of the practitioner's prescribing authority.
- 23 (e) The governor may direct the board to develop:
  - 24 (1) a prescription drug program that includes the establishment of
  - 25 criteria to eliminate or significantly reduce prescription fraud; and
  - 26 (2) a standard format for an official tamper resistant prescription
  - 27 drug form for prescriptions (as defined in IC 16-42-19-7(1)).
- 28 The board may adopt rules under IC 4-22-2 necessary to implement
- 29 this subsection.
- 30 (f) The standard format for a prescription drug form described in
- 31 subsection (e)(2) must include the following:
  - 32 (1) A counterfeit protection bar code with human readable
  - 33 representation of the data in the bar code.
  - 34 (2) A thermochromic mark on the front and the back of the
  - 35 prescription that:
    - 36 (A) is at least one-fourth (1/4) of one (1) inch in height and
    - 37 width; and
    - 38 (B) changes from blue to clear when exposed to heat.
- 39 (g) The board may contract with a supplier to implement and
- 40 manage the prescription drug program described in subsection (e). The
- 41 supplier must:
  - 42 (1) have been audited by a third party auditor using the SAS 70

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1           audit or an equivalent audit for at least the three (3) previous  
2           years; and  
3           (2) be audited by a third party auditor using the SAS 70 audit or  
4           an equivalent audit throughout the duration of the contract;  
5           in order to be considered to implement and manage the program.  
6           SECTION 3. IC 34-30-2-70.5 IS ADDED TO THE INDIANA  
7           CODE AS A NEW SECTION TO READ AS FOLLOWS  
8           [EFFECTIVE JULY 1, 2011]: **Sec. 70.5. IC 16-34-1-5.5 (Concerning**  
9           **a pharmacist or pharmacy that refuses to dispense or sell certain**  
10           **drugs or medical devices).**

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