SENATE BILL No. 503

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-48-4-14.7.

Synopsis: Sale of ephedrine or pseudoephedrine. Defines "retailer" and provides that the duties relating to the electronic tracking of ephedrine and pseudoephedrine (PSE) apply only to retailers. Requires a retailer to submit information relating to the purchase of nonprescription PSE to the National Precursor Log Exchange (NPLEx) administered by the National Association of Drug Diversion Investigators (NADDI) before completing a sale, and prohibits a retailer from completing a sale if NPLEx generates a "stop sale" notice. Requires PSE containing substances to be kept behind the counter, and specifies that the PSE weight limits apply to the base amount of PSE in the drug. Provides that a retailer who uses the electronic sales tracking system is liable for any negligent, reckless, deliberate, or wanton act or omission committed in carrying out the duties required by this section, and provides that a retailer may be liable to a third party for a violation of the duties required in using the electronic sales tracking system.

Effective: July 1, 2011.

Yoder

January 18, 2011, read first time and referred to Committee on Judiciary.

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Introduced

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. 503

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

SECTION 1. IC 35-48-4-14.7, AS AMENDED BY P.L.97-2010, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 14.7. (a) This section does not apply to the following:

(1) Ephedrine or pseudoephedrine dispensed pursuant to a prescription.

(2) The sale of a drug containing ephedrine or pseudoephedrine to a licensed health care provider, pharmacist, retail distributor, wholesaler, manufacturer, or an agent of any of these persons if the sale occurs in the regular course of lawful business activities. However, a retail distributor, wholesaler, or manufacturer is required to report a suspicious order to the state police department in accordance with subsection (f).

(3) The sale of a drug containing ephedrine or pseudoephedrine by a person who does not sell exclusively to walk-in customers for the personal use of the walk-in customers. However, if the person described in this subdivision is a retail distributor, wholesaler, or

manufacturer, the person is required to report a suspicious order to the state police department in accordance with subsection (f).

(b) The following definitions apply throughout this section:

(1) "Constant video monitoring" means the surveillance by an automated camera that:

(A) records at least one (1) photograph or digital image every ten (10) seconds;

(B) retains a photograph or digital image for at least seventy-two (72) hours;

(C) has sufficient resolution and magnification to permit the identification of a person in the area under surveillance; and

(D) stores a recorded photograph or digital image at a location that is immediately accessible to a law enforcement officer.

(2) "Convenience package" means a package that contains a drug having as an active ingredient not more than ~~one hundred twenty (120)~~ **sixty (60)** milligrams of ephedrine or pseudoephedrine, or both.

(3) "Ephedrine" means pure or adulterated ephedrine.

(4) "Pseudoephedrine" means pure or adulterated pseudoephedrine.

(5) "Retailer" means a grocery store, general merchandise store, drug store, or other similar establishment where ephedrine or pseudoephedrine products are available for sale.

~~(5)~~ **(6)** "Suspicious order" means a sale or transfer of a drug containing ephedrine or pseudoephedrine if the sale or transfer:

(A) is a sale or transfer that the retail distributor, wholesaler, or manufacturer is required to report to the United States Drug Enforcement Administration;

(B) appears suspicious to the retail distributor, wholesaler, or manufacturer in light of the recommendations contained in Appendix A of the report to the United States attorney general by the suspicious orders task force under the federal Comprehensive Methamphetamine Control Act of 1996; or

(C) is for cash or a money order in a total amount of at least two hundred dollars ($200).

~~(6)~~ **(7)** "Unusual theft" means the theft or unexplained disappearance from a particular retail store of drugs containing ten (10) grams or more of ephedrine, pseudoephedrine, or both in a twenty-four (24) hour period.

(c) This subsection does not apply to a convenience package. A ~~person~~ **retailer** may sell a drug that contains the active ingredient of ephedrine, pseudoephedrine, or both only if the ~~person~~ **retailer**

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complies with the following conditions:

(1) The ~~person~~ **retailer** does not sell the drug to a person less than eighteen (18) years of age.

(2) The ~~person~~ **retailer** does not sell drugs containing more than three and six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both, to one (1) individual on one (1) day, or nine (9) grams of ephedrine or pseudoephedrine, or both, to one (1) individual in a thirty (30) day period.

(3) The ~~person~~ **retailer** requires:

(A) the purchaser to produce a ~~state or federal~~ **valid government issued photo** identification card **showing the date of birth of the person;**

(B) the purchaser to ~~complete a paper or an electronic log in a format approved by the state police department with the purchaser's name, address, and driver's license or other identification number~~ **sign a written or electronic log attesting to the validity of the information;** and

(C) the clerk who is conducting the transaction to initial or electronically record the clerk's identification on the log.

Records from the completion of a log must be retained for at least two (2) years. A law enforcement officer has the right to inspect and copy a log or the records from the completion of a log in accordance with state and federal law. A ~~person~~ **retailer** may not sell or release a log or the records from the completion of a log for a commercial purpose. The Indiana criminal justice institute may obtain information concerning a log or the records from the completion of a log from a law enforcement officer if the information may not be used to identify a specific individual and is used only for statistical purposes. A retailer who in good faith releases information maintained under this subsection is immune from civil liability unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.

(4) The retailer maintains a record of information for each sale of a nonprescription product containing pseudoephedrine or ephedrine. Required information includes:

(1) the name and address of each purchaser;

(2) the type of identification presented;

(3) the governmental entity that issued the identification;

(4) the identification number; and

(5) the ephedrine or pseudoephedrine product purchased, including the number of grams the product contains and the date and time of the transaction.

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(5) Beginning January 1, 2012, a retailer shall, except as provided in subdivision (6), before completing a sale of an over-the-counter product containing pseudoephedrine or ephedrine, electronically submit the required information to the National Precursor Log Exchange (NPLEx) administered by the National Association of Drug Diversion Investigators (NADDI), if the NPLEx system is available to retailers in the state without a charge for accessing the system. The retailer may not complete the sale if the system generates a stop sale alert.

(6) If a retailer selling an over-the-counter product containing ephedrine or pseudoephedrine experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirement, the retailer shall maintain a written log or an alternative electronic recordkeeping mechanism until the retailer is able to comply with the electronic sales tracking requirement.

~~(4)~~ **(7)** The ~~person~~ **retailer** stores the drug

~~(A)~~ behind a counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable to a customer without the assistance of an employee. ~~or~~

~~(B) directly in front of the pharmacy counter in the direct line of sight of an employee at the pharmacy counter, in an area under constant video monitoring, if the drug is sold in a retail establishment that:~~

~~(i) is a pharmacy; or~~

~~(ii) contains a pharmacy that is open for business.~~

~~(5)~~ **(8)** The ~~person~~ **retailer** posts a sign warning that:

(A) it is a criminal offense for a person to purchase drugs containing more than nine (9) grams of ephedrine or pseudoephedrine, or both, in a thirty (30) day period;

(B) it is a criminal offense for a person to purchase drugs containing more than three and six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both, on one (1) day; and

(C) depending on the amount of ephedrine or pseudoephedrine contained in the drug, purchasing more than one (1) package of drugs containing ephedrine or pseudoephedrine on one (1) day may be a crime.

The warning sign must list maximum amounts of ephedrine or pseudoephedrine that may be purchased in both grams and milligrams.

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(d) A person may not purchase drugs containing more than three and six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both, on one (1) day, or more than nine (9) grams of ephedrine or pseudoephedrine, or both, in a thirty (30) day period. **These limits apply to the total amount of base ephedrine and pseudoephedrine contained in the products and not to the overall weight of the products.**

(e) This subsection only applies to convenience packages. A ~~person~~ **retailer** may not sell drugs containing more than ~~one hundred twenty (120)~~ **sixty (60)** milligrams of ephedrine or pseudoephedrine, or both in any one (1) transaction if the drugs are sold in convenience packages. A ~~person~~ **retailer** who sells convenience packages must secure the convenience packages **behind the counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable to a customer without the assistance of an employee.** ~~in at least one (1) of the following ways:~~

~~(1) The convenience package must be stored not more than thirty (30) feet away from a checkout station or counter and must be in the direct line of sight of an employee at the checkout station or counter.~~

~~(2) The convenience package must be protected by a reliable anti-theft device that uses package tags and detection alarms designed to prevent theft.~~

~~(3) The convenience package must be stored in restricted access shelving that permits a purchaser to remove not more than one (1) package every fifteen (15) seconds.~~

~~(4) The convenience package must be stored in an area that is under constant video monitoring, and a sign placed near the convenience package must warn that the area is under constant video monitoring.~~

(f) A retail distributor, wholesaler, or manufacturer shall report a suspicious order to the state police department in writing.

(g) Not later than three (3) days after the discovery of an unusual theft at a particular retail store, the retailer shall report the unusual theft to the state police department in writing. If three (3) unusual thefts occur in a thirty (30) day period at a particular retail store, the retailer shall, for at least one hundred eighty (180) days after the date of the last unusual theft, locate all drugs containing ephedrine or pseudoephedrine at that particular retail store behind a counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable to customers without the assistance of an employee.

(h) A unit (as defined in IC 36-1-2-23) may not adopt an ordinance

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after February 1, 2005, that is more stringent than this section.

(i) A person who knowingly or intentionally violates this section commits a Class C misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction under this section.

~~(j) Before June 30, 2007, the state police department shall submit a report to the legislative council detailing the effectiveness of this section in reducing the illicit production of methamphetamine. The report must describe the number of arrests or convictions that are attributable to the identification and logging requirements contained in this section, and must include recommendations for future action. The report must be in an electronic format under IC 5-14-6.~~

(j) A retailer who uses the electronic sales tracking system in accordance with this section is immune from civil liability for any act or omission committed in carrying out the duties required by this section, unless the act or omission was due to negligence, recklessness, or deliberate or wanton misconduct. A retailer is immune from liability to a third party unless the retailer has violated a provision of this section and the third party brings an action based on the retailer's violation of this section.

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