

# HOUSE BILL No. 1071

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## DIGEST OF INTRODUCED BILL

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

**Synopsis:** Local ordinances concerning ephedrine sales. Permits a local government unit to adopt an ordinance regulating the sale of ephedrine or pseudoephedrine that is more stringent than state law.

**Effective:** July 1, 2012.

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**Bacon, Kubacki, McNamara,  
Riecken**

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January 9, 2012, read first time and referred to Committee on Public Health.

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Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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# HOUSE BILL No. 1071



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:*

1 SECTION 1. IC 35-48-4-14.7, AS AMENDED BY P.L.221-2011,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2012]: Sec. 14.7. (a) This section does not apply to the  
4 following:

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

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

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



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

3 (b) The following definitions apply throughout this section:

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

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

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

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

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

14 (2) "Convenience package" means a package that contains a drug  
 15 having as an active ingredient not more than sixty (60) milligrams  
 16 of ephedrine or pseudoephedrine, or both.

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

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

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

23 (6) "Suspicious order" means a sale or transfer of a drug  
 24 containing ephedrine or pseudoephedrine if the sale or transfer:

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

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

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

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

39 (c) This subsection does not apply to a convenience package. A  
 40 retailer may sell a drug that contains the active ingredient of ephedrine,  
 41 pseudoephedrine, or both only if the retailer complies with the  
 42 following conditions:

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- 1 (1) The retailer does not sell the drug to a person less than  
 2 eighteen (18) years of age.
- 3 (2) The retailer does not sell drugs containing more than three and  
 4 six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both,  
 5 to one (1) individual on one (1) day, or seven and two-tenths (7.2)  
 6 grams of ephedrine or pseudoephedrine, or both, to one (1)  
 7 individual in a thirty (30) day period.
- 8 (3) The retailer requires:
- 9 (A) the purchaser to produce a valid government issued photo  
 10 identification card showing the date of birth of the person;
- 11 (B) the purchaser to sign a written or electronic log attesting  
 12 to the validity of the information; and
- 13 (C) the clerk who is conducting the transaction to initial or  
 14 electronically record the clerk's identification on the log.
- 15 Records from the completion of a log must be retained for at least  
 16 two (2) years. A law enforcement officer has the right to inspect  
 17 and copy a log or the records from the completion of a log in  
 18 accordance with state and federal law. A retailer may not sell or  
 19 release a log or the records from the completion of a log for a  
 20 commercial purpose. The Indiana criminal justice institute may  
 21 obtain information concerning a log or the records from the  
 22 completion of a log from a law enforcement officer if the  
 23 information may not be used to identify a specific individual and  
 24 is used only for statistical purposes. A retailer who in good faith  
 25 releases information maintained under this subsection is immune  
 26 from civil liability unless the release constitutes gross negligence  
 27 or intentional, wanton, or willful misconduct.
- 28 (4) The retailer maintains a record of information for each sale of  
 29 a nonprescription product containing pseudoephedrine or  
 30 ephedrine. Required information includes:
- 31 (A) the name and address of each purchaser;
- 32 (B) the type of identification presented;
- 33 (C) the governmental entity that issued the identification;
- 34 (D) the identification number; and
- 35 (E) the ephedrine or pseudoephedrine product purchased,  
 36 including the number of grams the product contains and the  
 37 date and time of the transaction.
- 38 (5) Beginning January 1, 2012, a retailer shall, except as provided  
 39 in subdivision (6), before completing a sale of an over-the-counter  
 40 product containing pseudoephedrine or ephedrine, electronically  
 41 submit the required information to the National Precursor Log  
 42 Exchange (NPLEx) administered by the National Association of

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1 Drug Diversion Investigators (NADDI), if the NPLeX system is  
2 available to retailers in the state without a charge for accessing  
3 the system. The retailer may not complete the sale if the system  
4 generates a stop sale alert.

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

12 (7) The retailer stores the drug behind a counter in an area  
13 inaccessible to a customer or in a locked display case that makes  
14 the drug unavailable to a customer without the assistance of an  
15 employee.

16 (8) The retailer posts a sign warning that:

17 (A) it is a criminal offense for a person to purchase drugs  
18 containing more than seven and two-tenths (7.2) grams of  
19 ephedrine or pseudoephedrine, or both, in a thirty (30) day  
20 period;

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

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

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

31 (d) A person may not purchase drugs containing more than three  
32 and six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both,  
33 on one (1) day, or more than seven and two-tenths (7.2) grams of  
34 ephedrine or pseudoephedrine, or both, in a thirty (30) day period.  
35 These limits apply to the total amount of base ephedrine and  
36 pseudoephedrine contained in the products and not to the overall  
37 weight of the products.

38 (e) This subsection only applies to convenience packages. A retailer  
39 may not sell drugs containing more than sixty (60) milligrams of  
40 ephedrine or pseudoephedrine, or both in any one (1) transaction if the  
41 drugs are sold in convenience packages. A retailer who sells  
42 convenience packages must secure the convenience packages behind

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1 the counter in an area inaccessible to a customer or in a locked display  
2 case that makes the drug unavailable to a customer without the  
3 assistance of an employee.

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

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

15 (h) A unit (as defined in IC 36-1-2-23) may ~~not~~ adopt an ordinance  
16 ~~after February 1, 2005~~, that is more stringent than this section.

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

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

29 (k) The following requirements apply to the NPLeX:

30 (1) Information contained in the NPLeX may be shared only with  
31 law enforcement officials.

32 (2) A law enforcement official may access Indiana transaction  
33 information maintained in the NPLeX for investigative purposes.

34 (3) NADDI may not modify sales transaction data that is shared  
35 with law enforcement officials.

36 (4) At least one (1) time per week, NADDI shall forward Indiana  
37 data contained in the NPLeX, including data concerning a  
38 transaction that could not be completed due to the issuance of a  
39 stop sale alert, to the state police department.

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