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# SENATE BILL No. 498

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 10-13-3-40; IC 34-30-2-152.3; IC 35-31.5-2; IC 35-48.

**Synopsis:** Ephedrine or pseudoephedrine. Provides that materials, compounds, mixtures, or preparations that contain ephedrine or pseudoephedrine are schedule III controlled substances that may be dispensed only by prescription. Repeals: (1) the law allowing the dispensing of ephedrine and pseudoephedrine without a prescription subject to certain restrictions; and (2) provisions related to that law.

**Effective:** July 1, 2013.

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### Head

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January 14, 2013, read first time and referred to Committee on Corrections & Criminal Law.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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## SENATE BILL No. 498



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 10-13-3-40, AS ADDED BY P.L.190-2006,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2013]: Sec. 40. (a) The department may use the appropriations  
4 described in subsection (b) for ~~either or both of the following purposes:~~  
5 ~~(1) operating and maintaining the central repository for criminal~~  
6 ~~history data.~~  
7 ~~(2) Establishing, operating, or maintaining an electronic log to~~  
8 ~~record the sale of drugs containing ephedrine or pseudoephedrine~~  
9 ~~in accordance with IC 35-48-4-14.7.~~  
10 (b) If the amount of money that is deposited in the state general fund  
11 during a state fiscal year from handgun license fees (as described in  
12 IC 35-47-2-4) exceeds one million one hundred thousand dollars  
13 (\$1,100,000), the excess is appropriated from the state general fund to  
14 the department for the ~~purposes~~ **purpose** described in subsection (a).  
15 An appropriation under this section is subject to allotment by the  
16 budget agency.



1 SECTION 2. IC 34-30-2-152.3 IS REPEALED [EFFECTIVE JULY  
2 1, 2013]. Sec. 152.3: IC 35-48-4-14.7 (Concerning a retailer who  
3 discloses information concerning the sale of a product containing  
4 ephedrine or pseudoephedrine):

5 SECTION 3. IC 35-31.5-2-61 IS REPEALED [EFFECTIVE JULY  
6 1, 2013]. Sec. 61: "Constant video monitoring"; for purposes of  
7 IC 35-48-4-14.7, has the meaning set forth in IC 35-48-4-14.7(b)(1):

8 SECTION 4. IC 35-31.5-2-66 IS REPEALED [EFFECTIVE JULY  
9 1, 2013]. Sec. 66: "Convenience package"; for purposes of  
10 IC 35-48-4-14.7, has the meaning set forth in IC 35-48-4-14.7(b)(2):

11 SECTION 5. IC 35-31.5-2-120 IS REPEALED [EFFECTIVE JULY  
12 1, 2013]. Sec. 120: "Ephedrine"; for purposes of IC 35-48-4-14.7, has  
13 the meaning set forth in IC 35-48-4-14.7(b)(3):

14 SECTION 6. IC 35-31.5-2-256 IS REPEALED [EFFECTIVE JULY  
15 1, 2013]. Sec. 256: "Pseudoephedrine"; for purposes of  
16 IC 35-48-4-14.7, has the meaning set forth in IC 35-48-4-14.7(b)(4):

17 SECTION 7. IC 35-31.5-2-279 IS REPEALED [EFFECTIVE JULY  
18 1, 2013]. Sec. 279: "Retailer"; for purposes of IC 35-48-4-14.7, has the  
19 meaning set forth in IC 35-48-4-14.7(b)(5):

20 SECTION 8. IC 35-31.5-2-320 IS REPEALED [EFFECTIVE JULY  
21 1, 2013]. Sec. 320: "Suspicious order"; for purposes of IC 35-48-4-14.7,  
22 has the meaning set forth in IC 35-48-4-14.7(b)(6):

23 SECTION 9. IC 35-31.5-2-343 IS REPEALED [EFFECTIVE JULY  
24 1, 2013]. Sec. 343: "Unusual theft"; for purposes of IC 35-48-4-14.7,  
25 has the meaning set forth in IC 35-48-4-14.7(b)(7):

26 SECTION 10. IC 35-48-2-8, AS AMENDED BY P.L.22-2008,  
27 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
28 JULY 1, 2013]: Sec. 8. (a) The controlled substances listed in this  
29 section are included in schedule III.

30 (b) Stimulants. Unless specifically excepted or unless listed in  
31 another schedule, any material, compound, mixture, or preparation  
32 which contains any quantity of the following substances having a  
33 stimulant effect on the central nervous system, including its salts,  
34 isomers (whether optical, position, or geometric), and salts of such  
35 isomers whenever the existence of such salts, isomers, and salts of  
36 isomers is possible within the specific chemical designation:

37 (1) Those compounds, mixtures, or preparations in dosage unit  
38 form containing any stimulant substances listed in schedule II  
39 which compounds, mixtures, or preparations were listed on April  
40 1, 1986, as excepted compounds under 21 CFR 1308.32, and any  
41 other drug of the quantitative composition shown in that list for  
42 those drugs or that is the same except that it contains a lesser

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- 1 quantity of controlled substances (1405).  
 2 (2) Benzphetamine (1228).  
 3 (3) Chlorphentermine (1645).  
 4 (4) Clortermine (1647).  
 5 (5) Phendimetrazine (1615).  
 6 (c) Depressants. Unless specifically excepted or unless listed in  
 7 another schedule, any material, compound, mixture, or preparation  
 8 which contains any quantity of the following substances having a  
 9 depressant effect on the central nervous system:  
 10 (1) Any compound, mixture, or preparation containing:  
 11 (A) amobarbital (2126);  
 12 (B) secobarbital (2316);  
 13 (C) pentobarbital (2271); or  
 14 (D) any of their salts;  
 15 and one (1) or more other active medicinal ingredients which are  
 16 not listed in any schedule.  
 17 (2) Any suppository dosage form containing:  
 18 (A) amobarbital (2126);  
 19 (B) secobarbital (2316);  
 20 (C) pentobarbital (2271); or  
 21 (D) any of their salts;  
 22 and approved by the Food and Drug Administration for marketing  
 23 only as a suppository.  
 24 (3) Any substance which contains any quantity of a derivative of  
 25 barbituric acid, or any salt thereof (2100).  
 26 (4) Chlorhexadol (2510).  
 27 (5) Embutramide (2020).  
 28 (6) Lysergic acid (7300).  
 29 (7) Lysergic acid amide (7310).  
 30 (8) Methyprylon (2575).  
 31 (9) Sulfondiethylmethane (2600).  
 32 (10) Sulfonethylmethane (2605).  
 33 (11) Sulfonmethane (2610).  
 34 (12) A combination product containing Tiletamine and  
 35 Zolazepam or any salt thereof (Telazol) (7295).  
 36 (13) Any drug product containing gamma-hydroxybutyric acid,  
 37 including its salts, isomers, and salts of isomers, for which an  
 38 application is approved under section 505 of the federal Food,  
 39 Drug and Cosmetic Act, 21 U.S.C. 301 et seq. (2012).  
 40 (d) Nalorphine (a narcotic drug) (9400).  
 41 (e) Narcotic Drugs. Unless specifically excepted or unless listed in  
 42 another schedule, any material, compound, mixture, or preparation

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1 containing any of the following narcotic drugs, or their salts calculated  
2 as the free anhydrous base or alkaloid, in the following limited  
3 quantities:

4 (1) Not more than 1.8 grams of codeine, per 100 milliliters or not  
5 more than 90 milligrams per dosage unit, with an equal or greater  
6 quantity of an isoquinoline alkaloid of opium (9803).

7 (2) Not more than 1.8 grams of codeine, per 100 milliliters or not  
8 more than 90 milligrams per dosage unit, with one (1) or more  
9 active, nonnarcotic ingredients in recognized therapeutic amounts  
10 (9804).

11 (3) Not more than 300 milligrams of dihydrocodeinone, per 100  
12 milliliters or not more than 15 milligrams per dosage unit, with a  
13 fourfold or greater quantity of an isoquinoline alkaloid of opium  
14 (9805).

15 (4) Not more than 300 milligrams of dihydrocodeinone, per 100  
16 milliliters or not more than 15 milligrams per dosage unit, with  
17 one (1) or more active nonnarcotic ingredients in recognized  
18 therapeutic amounts (9806).

19 (5) Not more than 1.8 grams of dihydrocodeine, per 100 milliliters  
20 or not more than 90 milligrams per dosage unit, with one (1) or  
21 more active, nonnarcotic ingredients in recognized therapeutic  
22 amounts (9807).

23 (6) Not more than 300 milligrams of ethylmorphine, per 100  
24 milliliters or not more than 15 milligrams per dosage unit, with  
25 one (1) or more active, nonnarcotic ingredients in recognized  
26 therapeutic amounts (9808).

27 (7) Not more than 500 milligrams of opium per 100 milliliters or  
28 per 100 grams or not more than 25 milligrams per dosage unit,  
29 with one (1) or more active, nonnarcotic ingredients in recognized  
30 therapeutic amounts (9809).

31 (8) Not more than 50 milligrams of morphine, per 100 milliliters  
32 or per 100 grams with one (1) or more active nonnarcotic  
33 ingredients in recognized therapeutic amounts (9810).

34 (9) Buprenorphine (9064).

35 (f) Anabolic steroid (as defined in 21 U.S.C. 802(41)(A) and 21  
36 U.S.C. 802(41)(B)).

37 (g) The board shall except by rule any compound, mixture, or  
38 preparation containing any stimulant or depressant substance listed in  
39 subsections (b) through (e) from the application of any part of this  
40 article if the compound, mixture, or preparation contains one (1) or  
41 more active medicinal ingredients not having a stimulant or depressant  
42 effect on the central nervous system, and if the admixtures are included

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1 therein in combinations, quantity, proportion, or concentration that  
 2 vitiate the potential for abuse of the substances which have a stimulant  
 3 or depressant effect on the central nervous system.

4 (h) Any material, compound, mixture, or preparation which contains  
 5 any quantity of Ketamine (7285).

6 (i) Hallucinogenic substances:

7 Dronabinol (synthetic) in sesame oil and encapsulated in a soft  
 8 gelatin capsule in a United States Food and Drug Administration  
 9 approved drug product (7369).

10 **(j) A material, compound, mixture, or preparation that contains**  
 11 **a quantity of any of the following substances, pure or adulterated:**

12 **(1) Ephedrine.**

13 **(2) Pseudoephedrine.**

14 SECTION 11. IC 35-48-4-14.7 IS REPEALED [EFFECTIVE JULY  
 15 1, 2013]. Sec. 14.7: (a) This section does not apply to the following:

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

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

25 (3) The sale of a drug containing ephedrine or pseudoephedrine  
 26 by a person who does not sell exclusively to walk-in customers for  
 27 the personal use of the walk-in customers. However, if the person  
 28 described in this subdivision is a retail distributor; wholesaler; or  
 29 manufacturer, the person is required to report a suspicious order  
 30 to the state police department in accordance with subsection (f):

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

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

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

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

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

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

42 (2) "Convenience package" means a package that contains a drug

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1 having as an active ingredient not more than sixty (60) milligrams  
2 of ephedrine or pseudoephedrine, or both.

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

4 (4) "Pseudoephedrine" means pure or adulterated  
5 pseudoephedrine:

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

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

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

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

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

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

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

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

31 (2) The retailer does not sell drugs containing more than three and  
32 six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both,  
33 to one (1) individual on one (1) day, or seven and two-tenths (7.2)  
34 grams of ephedrine or pseudoephedrine, or both, to one (1)  
35 individual in a thirty (30) day period:

36 (3) The retailer requires:

37 (A) the purchaser to produce a valid government issued photo  
38 identification card showing the date of birth of the person;

39 (B) the purchaser to sign a written or electronic log attesting  
40 to the validity of the information; and

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

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

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

17 (A) the name and address of each purchaser;

18 (B) the type of identification presented;

19 (C) the governmental entity that issued the identification;

20 (D) the identification number; and

21 (E) the ephedrine or pseudoephedrine product purchased;  
22 including the number of grams the product contains and the  
23 date and time of the transaction.

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

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

40 (7) The retailer stores the drug behind a counter in an area  
41 inaccessible to a customer or in a locked display case that makes  
42 the drug unavailable to a customer without the assistance of an

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1 employee:

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

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

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

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

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

17 (d) A person may not purchase drugs containing more than three  
18 and six-tenths (3.6) grams of ephedrine or pseudoephedrine; or both,  
19 on one (1) day; or more than seven and two-tenths (7.2) grams of  
20 ephedrine or pseudoephedrine; or both, in a thirty (30) day period.  
21 These limits apply to the total amount of base ephedrine and  
22 pseudoephedrine contained in the products and not to the overall  
23 weight of the products.

24 (e) This subsection only applies to convenience packages. A retailer  
25 may not sell drugs containing more than sixty (60) milligrams of  
26 ephedrine or pseudoephedrine; or both in any one (1) transaction if the  
27 drugs are sold in convenience packages. A retailer who sells  
28 convenience packages must secure the convenience packages behind  
29 the counter in an area inaccessible to a customer or in a locked display  
30 case that makes the drug unavailable to a customer without the  
31 assistance of an employee.

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

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



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- 1 (h) A unit (as defined in IC 36-1-2-23) may not adopt an ordinance
- 2 after February 1, 2005, that is more stringent than this section.
- 3 (i) A person who knowingly or intentionally violates this section
- 4 commits a Class C misdemeanor. However, the offense is a Class A
- 5 misdemeanor if the person has a prior unrelated conviction under this
- 6 section.
- 7 (j) A retailer who uses the electronic sales tracking system in
- 8 accordance with this section is immune from civil liability for any act
- 9 or omission committed in carrying out the duties required by this
- 10 section, unless the act or omission was due to negligence, recklessness,
- 11 or deliberate or wanton misconduct. A retailer is immune from liability
- 12 to a third party unless the retailer has violated a provision of this
- 13 section and the third party brings an action based on the retailer's
- 14 violation of this section.
- 15 (k) The following requirements apply to the NPLeX:
- 16 (1) Information contained in the NPLeX may be shared only with
- 17 law enforcement officials.
- 18 (2) A law enforcement official may access Indiana transaction
- 19 information maintained in the NPLeX for investigative purposes.
- 20 (3) NADDI may not modify sales transaction data that is shared
- 21 with law enforcement officials.
- 22 (4) At least one (1) time per week, NADDI shall forward Indiana
- 23 data contained in the NPLeX, including data concerning a
- 24 transaction that could not be completed due to the issuance of a
- 25 stop sale alert, to the state police department.

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