

HOUSE BILL No. 1063

DIGEST OF INTRODUCED BILL

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

Synopsis: Ephedrine and pseudoephedrine sales. Makes it a Class C misdemeanor for a person to knowingly or intentionally purchase drugs containing more than 28.8 grams of ephedrine or pseudoephedrine, or both, in a one year period. Allows a local government unit to adopt an ordinance that provides that a retailer may sell a drug that contains the active ingredient of ephedrine, pseudoephedrine, or both, only if the sale is made pursuant to a prescription.

Effective: July 1, 2013.

**Bacon, Kubacki, McNamara,
Riecken**

January 7, 2013, read first time and referred to Committee on Courts and Criminal Code.

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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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HOUSE BILL No. 1063



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, 2013]: Sec. 14.7. (a) This section does not apply to the
- 4 following:
- 5 (1) Ephedrine or pseudoephedrine dispensed pursuant to a
- 6 prescription, **including ephedrine or pseudoephedrine**
- 7 **dispensed pursuant to a prescription as required by an**
- 8 **ordinance adopted by a unit (as defined in IC 36-1-2-23)**
- 9 **under subsection (l).**
- 10 (2) The sale of a drug containing ephedrine or pseudoephedrine
- 11 to a licensed health care provider, pharmacist, retail distributor,
- 12 wholesaler, manufacturer, or an agent of any of these persons if
- 13 the sale occurs in the regular course of lawful business activities.
- 14 However, a retail distributor, wholesaler, or manufacturer is
- 15 required to report a suspicious order to the state police department
- 16 in accordance with subsection (f).
- 17 (3) The sale of a drug containing ephedrine or pseudoephedrine



1 by a person who does not sell exclusively to walk-in customers for
 2 the personal use of the walk-in customers. However, if the person
 3 described in this subdivision is a retail distributor, wholesaler, or
 4 manufacturer, the person is required to report a suspicious order
 5 to the state police department in accordance with subsection (f).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (c) This subsection does not apply to a convenience package. A

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1 retailer may sell a drug that contains the active ingredient of ephedrine,
 2 pseudoephedrine, or both only if the retailer complies with the
 3 following conditions:

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

6 (2) The retailer does not sell drugs containing more than:

7 (A) three and six-tenths (3.6) grams of ephedrine or
 8 pseudoephedrine, or both, to one (1) individual on one (1) day;
 9 or

10 (B) seven and two-tenths (7.2) grams of ephedrine or
 11 pseudoephedrine, or both, to one (1) individual in a thirty (30)
 12 day period; or

13 (C) **twenty-eight and eight-tenths (28.8) grams of**
 14 **ephedrine or pseudoephedrine, or both, to one (1)**
 15 **individual in a one (1) year period.**

16 (3) The retailer requires:

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

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

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

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

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

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

40 (B) the type of identification presented;

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

42 (D) the identification number; and

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- 1 (E) the ephedrine or pseudoephedrine product purchased,
 2 including the number of grams the product contains and the
 3 date and time of the transaction.
- 4 (5) Beginning January 1, 2012, a retailer shall, except as provided
 5 in subdivision (6), before completing a sale of an over-the-counter
 6 product containing pseudoephedrine or ephedrine, electronically
 7 submit the required information to the National Precursor Log
 8 Exchange (NPLEx) administered by the National Association of
 9 Drug Diversion Investigators (NADDI), if the NPLEx system is
 10 available to retailers in the state without a charge for accessing
 11 the system. The retailer may not complete the sale if the system
 12 generates a stop sale alert.
- 13 (6) If a retailer selling an over-the-counter product containing
 14 ephedrine or pseudoephedrine experiences mechanical or
 15 electronic failure of the electronic sales tracking system and is
 16 unable to comply with the electronic sales tracking requirement,
 17 the retailer shall maintain a written log or an alternative electronic
 18 recordkeeping mechanism until the retailer is able to comply with
 19 the electronic sales tracking requirement.
- 20 (7) The retailer stores the drug behind a counter in an area
 21 inaccessible to a customer or in a locked display case that makes
 22 the drug unavailable to a customer without the assistance of an
 23 employee.
- 24 (8) The retailer posts a sign warning that:
- 25 (A) it is a criminal offense for a person to purchase drugs
 26 containing more than seven and two-tenths (7.2) grams of
 27 ephedrine or pseudoephedrine, or both, in a thirty (30) day
 28 period;
- 29 (B) it is a criminal offense for a person to purchase drugs
 30 containing more than three and six-tenths (3.6) grams of
 31 ephedrine or pseudoephedrine, or both, on one (1) day; ~~and~~
- 32 **(C) it is a criminal offense for a person to purchase drugs**
 33 **containing more than twenty-eight and eight-tenths (28.8)**
 34 **grams of ephedrine or pseudoephedrine, or both, in a one**
 35 **(1) year period; and**
- 36 ~~(D)~~ **(D)** depending on the amount of ephedrine or
 37 pseudoephedrine contained in the drug, purchasing more than
 38 one (1) package of drugs containing ephedrine or
 39 pseudoephedrine on one (1) day may be a crime.
- 40 The warning sign must list maximum amounts of ephedrine or
 41 pseudoephedrine that may be purchased in both grams and
 42 milligrams.

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1 (d) A person may not purchase drugs containing:

2 (1) more than three and six-tenths (3.6) grams of ephedrine or
3 pseudoephedrine, or both, on one (1) day; ~~or~~

4 (2) more than seven and two-tenths (7.2) grams of ephedrine or
5 pseudoephedrine, or both, in a thirty (30) day period; **or**

6 (3) **more than twenty-eight and eight-tenths (28.8) grams of**
7 **ephedrine or pseudoephedrine, or both, in a one (1) year**
8 **period.**

9 These limits apply to the total amount of base ephedrine and
10 pseudoephedrine contained in the products and not to the overall
11 weight of the products.

12 (e) This subsection only applies to convenience packages. A retailer
13 may not sell drugs containing more than sixty (60) milligrams of
14 ephedrine or pseudoephedrine, or both in any one (1) transaction if the
15 drugs are sold in convenience packages. A retailer who sells
16 convenience packages must secure the convenience packages behind
17 the counter in an area inaccessible to a customer or in a locked display
18 case that makes the drug unavailable to a customer without the
19 assistance of an employee.

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

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

31 (h) **Except as provided in subsection (l),** a unit (as defined in
32 IC 36-1-2-23) may not adopt an ordinance after February 1, 2005, that
33 is more stringent than this section.

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

38 (j) A retailer who uses the electronic sales tracking system in
39 accordance with this section is immune from civil liability for any act
40 or omission committed in carrying out the duties required by this
41 section, unless the act or omission was due to negligence, recklessness,
42 or deliberate or wanton misconduct. A retailer is immune from liability

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1 to a third party unless the retailer has violated a provision of this
2 section and the third party brings an action based on the retailer's
3 violation of this section.

- 4 (k) The following requirements apply to the NPLeX:
5 (1) Information contained in the NPLeX may be shared only with
6 law enforcement officials.
7 (2) A law enforcement official may access Indiana transaction
8 information maintained in the NPLeX for investigative purposes.
9 (3) NADDI may not modify sales transaction data that is shared
10 with law enforcement officials.
11 (4) At least one (1) time per week, NADDI shall forward Indiana
12 data contained in the NPLeX, including data concerning a
13 transaction that could not be completed due to the issuance of a
14 stop sale alert, to the state police department.

15 **(l) A unit (as defined in IC 36-1-2-23) may adopt an ordinance**
16 **that provides that a retailer may sell a drug that contains the active**
17 **ingredient of ephedrine, pseudoephedrine, or both, only if the sale**
18 **is made pursuant to a prescription.**

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