HOUSE BILL No. 1525

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5-8-7; IC 15-20-1-5; IC 25-26-13-4.1; IC 35-31.5-2; IC 35-45-21; IC 36-1-3-8.

Synopsis: Synthetic drugs. Makes the sale of an item marked as not for human consumption a Class A infraction if the item is sold in a retail establishment for human consumption, and increases the penalty to a Class D felony for a second or subsequent violation. Makes the sale of an item intended for human consumption at a retail establishment a Class A infraction if the item is not displayed or advertised. Increases the penalty to a Class D felony for a second or subsequent violation, and creates a defense for recently arrived items. Provides that the sale of an undisclosed consumable item or a consumable item marked as not for human consumption is a deceptive act (permitting a civil action by the attorney general or an individual), and permits the department of state revenue to revoke the seller's retail merchant certificate upon conviction. Permits the board of pharmacy to adopt emergency rules to schedule a substance as a controlled substance if it is dangerous and has no countervailing medical benefits, and creates a standard for the board to apply in making this determination. Permits a unit to adopt an ordinance imposing a fine of not more than $10,000 for the violation of an ordinance relating to the sale of synthetic drugs, a dangerous consumable item, or an undisclosed consumable.

Effective: July 1, 2013.

Smith M, Davisson, DeLaney, Austin

January 22, 2013, read first time and referred to Committee on Courts and Criminal Code.

C o p y

Introduced

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.

C o p y

HOUSE BILL No. 1525

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 6-2.5-8-7, AS AMENDED BY P.L.78-2012, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. (a) The department may, for good cause, revoke a certificate issued under section 1, 3, or 4 of this chapter. However, the department must give the certificate holder at least five (5) days notice before it revokes the certificate under this subsection.

(b) The department shall revoke a certificate issued under section 1, 3, or 4 of this chapter if, for a period of three (3) years, the certificate holder fails to:

(1) file the returns required by IC 6-2.5-6-1; or

(2) report the collection of any state gross retail or use tax on the returns filed under IC 6-2.5-6-1.

However, the department must give the certificate holder at least five (5) days notice before it revokes the certificate.

(c) The department may, for good cause, revoke a certificate issued under section 1 of this chapter after at least five (5) days notice to the certificate holder if:

(1) the certificate holder is subject to an innkeeper's tax under IC 6-9; and

(2) a board, bureau, or commission established under IC 6-9 files a written statement with the department.

(d) The statement filed under subsection (c) must state that:

(1) information obtained by the board, bureau, or commission under IC 6-8.1-7-1 indicates that the certificate holder has not complied with IC 6-9; and

(2) the board, bureau, or commission has determined that significant harm will result to the county from the certificate holder's failure to comply with IC 6-9.

(e) The department shall revoke or suspend a certificate issued under section 1 of this chapter after at least five (5) days notice to the certificate holder if:

(1) the certificate holder owes taxes, penalties, fines, interest, or costs due under IC 6-1.1 that remain unpaid at least sixty (60) days after the due date under IC 6-1.1; and

(2) the treasurer of the county to which the taxes are due requests the department to revoke or suspend the certificate.

(f) The department shall reinstate a certificate suspended under subsection (e) if the taxes and any penalties due under IC 6-1.1 are paid or the county treasurer requests the department to reinstate the certificate because an agreement for the payment of taxes and any penalties due under IC 6-1.1 has been reached to the satisfaction of the county treasurer.

(g) The department shall revoke a certificate issued under section 1 of this chapter after at least five (5) days notice to the certificate holder if the department finds in a public hearing by a preponderance of the evidence that the certificate holder has violated IC 35-45-5-3, IC 35-45-5-3.5, or IC 35-45-5-4.

(h) If a person makes a payment for the certificate under section 1 or 3 of this chapter with a check, credit card, debit card, or electronic funds transfer, and the department is unable to obtain payment of the check, credit card, debit card, or electronic funds transfer for its full face amount when the check, credit card, debit card, or electronic funds transfer is presented for payment through normal banking channels, the department shall notify the person by mail that the check, credit card, debit card, or electronic funds transfer was not honored and that the person has five (5) days after the notice is mailed to pay the fee in cash, by certified check, or other guaranteed payment. If the person fails to make the payment within the five (5) day period, the department shall revoke the certificate.

C o p y

(i) If the department finds in a public hearing by a preponderance of the evidence that a person has been convicted of violating IC 35-48-4-10 and the conviction involved the sale or the offer to sell, in the normal course of business, a synthetic drug by a retail merchant in a place of business for which the retail merchant has been issued a registered retail merchant certificate under section 1 of this chapter, the department:

(1) shall suspend the registered retail merchant certificate for the place of business for one (1) year; and

(2) may not issue another retail merchant certificate under section 1 of this chapter for one (1) year to any person:

(A) that:

(i) applied for; or

(ii) made a retail transaction under;

the retail merchant certificate suspended under subdivision (1); or

(B) that:

(i) owned or co-owned, directly or indirectly; or

(ii) was an officer, a director, a manager, or a partner of;

the retail merchant that was issued the retail merchant certificate suspended under subdivision (1).

(j) If the department finds in a public hearing by a preponderance of the evidence that a person has been convicted of violating IC 35-45-21-3(b) (unlawful sale of a dangerous consumable item) or IC 35-45-21-4(b) (sale of an undisclosed consumable) in the normal course of business by a retail merchant in a place of business for which the retail merchant has been issued a registered retail merchant certificate under section 1 of this chapter, the department:

(1) shall suspend the registered retail merchant certificate for the place of business for one (1) year; and

(2) may not issue another retail merchant certificate under section 1 of this chapter for one (1) year to any person:

(A) that:

(i) applied for; or

(ii) made a retail transaction under;

the retail merchant certificate suspended under subdivision (1); or

(B) that:

(i) owned or co-owned, directly or indirectly; or

(ii) was an officer, a director, a manager, or a partner of;

the retail merchant that was issued the retail merchant

C o p y

certificate suspended under subdivision (1).

SECTION 2. IC 15-20-1-5, AS ADDED BY P.L.2-2008, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5. (a) The following definitions apply throughout this section:

(1) "Coydog" means:

(A) an animal that is the offspring of a coyote and another animal; or

(B) an animal that is the offspring of:

(i) an animal that is the offspring of a coyote and another animal; and

(ii) another animal.

(2) "Secure enclosure" means an outdoor pen that is:

(A) roofed or that has sides at least six (6) feet tall; and

(B) constructed in such a manner that the type of animal contained within the pen cannot reasonably be expected to escape.

(3) "Wolf hybrid" means:

(A) an animal that is the offspring of a wolf and another animal; or

(B) an animal that is the offspring of:

(i) an animal that is the offspring of a wolf and another animal; and

(ii) another animal.

(b) An owner of a wolf hybrid or coydog shall:

(1) keep the animal in a building or secure enclosure; or

(2) keep the animal:

(A) under the reasonable control of an individual; and

(B) on a leash not more than eight (8) feet in length.

Subject to subsections (c) and (d), an owner who does not comply with this subsection commits a Class B infraction. An owner who merely tethers or chains a coydog or wolf hybrid does not comply with this subsection.

(c) Subject to subsection (d), an owner of a wolf hybrid or coydog commits a Class B misdemeanor if the owner recklessly, knowingly, or intentionally fails to comply with subsection (b) and:

(1) the wolf hybrid or coydog enters property other than the property of the owner; and

(2) the wolf hybrid or coydog causes damage to livestock or the personal property of another individual.

(d) The offense under subsection (c) is:

(1) a Class A misdemeanor if the owner has one (1) prior

C o p y

unrelated conviction under this section;

(2) a Class D felony if:

(A) the owner has more than one (1) prior unrelated conviction for a violation under this section; or

(B) the owner knowingly, intentionally, or recklessly fails to comply with subsection (b) and the failure to comply results in serious bodily injury to a person; and

(3) a Class C felony if the owner knowingly, intentionally, or recklessly fails to comply with subsection (b) and the failure to comply results in the death of a person.

(e) Notwithstanding IC 36-1-3-8(a), a unit (as defined in IC 36-1-2-23) may adopt an ordinance:

(1) prohibiting a person from possessing a wolf hybrid or coydog; or

(2) imposing:

(A) a penalty of more than one thousand dollars ($1,000) up to the limits prescribed in ~~IC 36-1-3-8(a)(10)(B)~~ **IC 36-1-3-8(a)(10)(C)** for a violation of subsection (b); or

(B) conditions on the possession of a wolf hybrid or coydog that are more stringent than the provisions of subsection (b).

SECTION 3. IC 25-26-13-4.1, AS ADDED BY P.L.78-2012, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4.1. (a) The board may adopt an emergency rule to declare that a substance is a synthetic drug.

(b) The board may adopt an emergency rule declaring a substance to be a synthetic drug if the board finds that the substance:

(1) has been scheduled or emergency scheduled by the United States Drug Enforcement Administration; ~~or~~

(2) has been scheduled, emergency scheduled, or criminalized by another state; **or**

(3) is a dangerous substance with no countervailing medical benefits.

(c) In making its determination under subsection (b)(3), the board shall consider the following factors relating to the dangerous substance:

(1) The actual or relative potential for abuse.

(2) Scientific evidence of the substance's pharmacological effect, if known.

(3) The state of current scientific knowledge regarding the substance.

(4) The history and current pattern of abuse.

(5) The scope, duration, and significance of abuse.

C o p y

(6) The degree of risk to the public health.

(7) The psychic or physiological dependence liability of the substance.

~~(c)~~ **(d)** A rule adopted under this section becomes effective thirty (30) days after it is filed with the publisher under IC 4-22-2-37.1.

~~(d)~~ **(e)** A rule adopted under this section expires on June 30 of the year following the year in which it is filed with the publisher under IC 4-22-2-37.1.

~~(e)~~ **(f)** The board may readopt under this section an emergency rule that has expired.

SECTION 4. IC 35-31.5-2-58.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 58.5. "Consumed", for purposes of IC 35-45-21, has the meaning set forth in IC 35-45-21-2.**

SECTION 5. IC 35-31.5-2-279.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 279.5. "Retail establishment", for purposes of IC 35-45-21, has the meaning set forth in IC 35-45-21-2.**

SECTION 6. IC 35-31.5-2-339.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 339.5. "Undisclosed consumable", for purposes of IC 35-45-21, has the meaning set forth in IC 35-45-21-2.**

SECTION 7. IC 35-45-21 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:

Chapter 21. Sale of Dangerous Items for Consumption

Sec. 1. This section applies only to items for sale or available for sale at a retail establishment.

Sec. 2. The following definitions apply throughout this chapter:

(1) "Consumed" includes ingesting, smoking, injecting, or otherwise placing a substance in the human body.

(2) "Retail establishment" means a grocery store, general merchandise store, convenience store, drug store, or other similar establishment where items are sold to a consumer.

(3) "Undisclosed consumable" means an item intended or likely to be consumed by a person, even if the item is marked as not for human consumption, and:

(A) that is available for sale in a retail establishment; and

(B) either:

(i) is not displayed in the retail establishment; or

C o p y

(ii) whose availability is not otherwise indicated by a notice, advertisement, or similar device conspicuously displayed on the premises of the retail establishment.

Sec. 3. (a) A person who, at a retail establishment:

(1) sells an item marked or described as not for human consumption to another person; and

(2) knows or should have known that the item:

(A) was intended to be consumed by a person; or

(B) would likely be consumed by a human being;

commits unlawful sale of a dangerous consumable item, a Class A infraction, except as provided in subsection (b). Each sale constitutes a separate violation.

(b) A person who, having a previous judgment or conviction for a violation of this section, knowingly or intentionally violates subsection (a) commits a Class D felony.

Sec. 4. (a) A person who, at a retail establishment, sells an undisclosed consumable to another person commits sale of an undisclosed consumable, a Class A infraction, except as provided in subsection (b). Each sale constitutes a separate violation.

(b) A person who, having a previous judgment or conviction for a violation of this section, knowingly or intentionally violates subsection (a) commits a Class D felony.

(c) It is a defense to an action or prosecution under this section that the item was not displayed or advertised solely because the item arrived at the retail establishment so recently that it was not practicable to display or otherwise post a notice of its availability before its sale.

Sec. 5. In addition to any other penalty, a violation of this chapter is a deceptive act under IC 24-5-0.5-4.

SECTION 8. IC 36-1-3-8, AS AMENDED BY P.L.200-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8. (a) Subject to subsection (b), a unit does not have the following:

(1) The power to condition or limit its civil liability, except as expressly granted by statute.

(2) The power to prescribe the law governing civil actions between private persons.

(3) The power to impose duties on another political subdivision, except as expressly granted by statute.

(4) The power to impose a tax, except as expressly granted by statute.

(5) The power to impose a license fee greater than that reasonably

C o p y

related to the administrative cost of exercising a regulatory power.

(6) The power to impose a service charge or user fee greater than that reasonably related to reasonable and just rates and charges for services.

(7) The power to regulate conduct that is regulated by a state agency, except as expressly granted by statute.

(8) The power to prescribe a penalty for conduct constituting a crime or infraction under statute.

(9) The power to prescribe a penalty of imprisonment for an ordinance violation.

(10) The power to prescribe a penalty of a fine as follows:

(A) More than ten thousand dollars ($10,000) for the violation of an ordinance or a regulation concerning air emissions adopted by a county that has received approval to establish an air program under IC 13-17-12-6.

(B) **More than ten thousand dollars ($10,000) for a violation of an ordinance relating to the sale of synthetic drugs, a dangerous consumable item (IC 35-45-21-3), or an undisclosed consumable (IC 35-45-21-4).**

(C) For a violation of any other ordinance:

(i) more than two thousand five hundred dollars ($2,500) for a first violation of the ordinance; and

(ii) except as provided in subsection (c), more than seven thousand five hundred dollars ($7,500) for a second or subsequent violation of the ordinance.

(11) The power to invest money, except as expressly granted by statute.

(12) The power to order or conduct an election, except as expressly granted by statute.

(b) A township does not have the following, except as expressly granted by statute:

(1) The power to require a license or impose a license fee.

(2) The power to impose a service charge or user fee.

(3) The power to prescribe a penalty.

(c) Subsection ~~(a)(10)(B)(ii)~~ **(a)(10)(C)(ii)** does not apply to the violation of an ordinance that regulates traffic or parking.

C o p y