

SENATE MOTION

MADAM PRESIDENT:

I move that Senate Bill 536 be amended to read as follows:

- 1 Page 2, line 19, delete "suspend the person's" and insert "**proceed**
2 **in accordance with subsection (i) (if the violation resulted in a**
3 **criminal conviction) or subsection (j) (if the violation resulted in a**
4 **judgment for an infraction)."**
- 5 Page 2, delete lines 20 through 21.
- 6 Page 3, line 35, delete "or judgment".
- 7 Page 3, line 36, delete "or violation".
- 8 Page 4, between lines 13 and 14, begin a new paragraph and insert:
9 "**(j) If the department finds in a public hearing by a**
10 **preponderance of the evidence that a person has a judgment for a**
11 **violation of IC 35-48-4-10.5 as an infraction and the violation**
12 **involved the sale of or the offer to sell, in the normal course of**
13 **business, a synthetic drug or a synthetic drug lookalike substance**
14 **by a retail merchant in a place of business for which the retail**
15 **merchant has been issued a registered retail merchant certificate**
16 **under section 1 of this chapter, the department:**
17 **(1) may suspend the registered retail merchant certificate for**
18 **the place of business for six (6) months; and**
19 **(2) may withhold issuance of another retail merchant**
20 **certificate under section 1 of this chapter for six (6) months to**
21 **any person:**
22 **(A) that:**
23 **(i) applied for; or**
24 **(ii) made a retail transaction under;**
25 **the retail merchant certificate suspended under**
26 **subdivision (1); or**
27 **(B) that:**
28 **(i) owned or co-owned, directly or indirectly; or**
29 **(ii) was an officer, a director, a manager, or a partner of;**
30 **the retail merchant that was issued the retail merchant**

- 1 **certificate suspended under subdivision (1)."**
2 Page 4, between lines 28 and 29, begin a new paragraph and insert:
3 "SECTION 5. IC 16-31-3-14, AS AMENDED BY P.L.77-2012,
4 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 UPON PASSAGE]: Sec. 14. (a) A person holding a certificate or
6 license issued under this article must comply with the applicable
7 standards and rules established under this article. A certificate holder
8 or license holder is subject to disciplinary sanctions under subsection
9 (b) if the department of homeland security determines that the
10 certificate holder or license holder:
11 (1) engaged in or knowingly cooperated in fraud or material
12 deception in order to obtain a certificate or license, including
13 cheating on a certification or licensure examination;
14 (2) engaged in fraud or material deception in the course of
15 professional services or activities;
16 (3) advertised services or goods in a false or misleading manner;
17 (4) falsified or knowingly allowed another person to falsify
18 attendance records or certificates of completion of continuing
19 education courses required under this article or rules adopted
20 under this article;
21 (5) is convicted of a crime, if the act that resulted in the
22 conviction has a direct bearing on determining if the certificate
23 holder or license holder should be entrusted to provide emergency
24 medical services;
25 (6) is convicted of violating IC 9-19-14.5;
26 (7) fails to comply and maintain compliance with or violates any
27 applicable provision, standard, or other requirement of this article
28 or rules adopted under this article;
29 (8) continues to practice if the certificate holder or license holder
30 becomes unfit to practice due to:
31 (A) professional incompetence that includes the undertaking
32 of professional activities that the certificate holder or license
33 holder is not qualified by training or experience to undertake;
34 (B) failure to keep abreast of current professional theory or
35 practice;
36 (C) physical or mental disability; or
37 (D) addiction to, abuse of, or dependency on alcohol or other
38 drugs that endanger the public by impairing the certificate
39 holder's or license holder's ability to practice safely;
40 (9) engages in a course of lewd or immoral conduct in connection
41 with the delivery of services to the public;
42 (10) allows the certificate holder's or license holder's name or a
43 certificate or license issued under this article to be used in
44 connection with a person who renders services beyond the scope
45 of that person's training, experience, or competence;
46 (11) is subjected to disciplinary action in another state or

- 1 jurisdiction on grounds similar to those contained in this chapter.
 2 For purposes of this subdivision, a certified copy of a record of
 3 disciplinary action constitutes prima facie evidence of a
 4 disciplinary action in another jurisdiction;
 5 (12) assists another person in committing an act that would
 6 constitute a ground for disciplinary sanction under this chapter;
 7 or
 8 (13) allows a certificate or license issued by the commission to
 9 be:
 10 (A) used by another person; or
 11 (B) displayed to the public when the certificate or license is
 12 expired, inactive, invalid, revoked, or suspended.
- 13 (b) The department of homeland security may issue an order under
 14 IC 4-21.5-3-6 to impose one (1) or more of the following sanctions if
 15 the department of homeland security determines that a certificate
 16 holder or license holder is subject to disciplinary sanctions under
 17 subsection (a):
 18 (1) Revocation of a certificate holder's certificate or license
 19 holder's license for a period not to exceed seven (7) years.
 20 (2) Suspension of a certificate holder's certificate or license
 21 holder's license for a period not to exceed seven (7) years.
 22 (3) Censure of a certificate holder or license holder.
 23 (4) Issuance of a letter of reprimand.
 24 (5) Assessment of a civil penalty against the certificate holder or
 25 license holder in accordance with the following:
 26 (A) The civil penalty may not exceed five hundred dollars
 27 (\$500) per day per violation.
 28 (B) If the certificate holder or license holder fails to pay the
 29 civil penalty within the time specified by the department of
 30 homeland security, the department of homeland security may
 31 suspend the certificate holder's certificate or license holder's
 32 license without additional proceedings.
 33 (6) Placement of a certificate holder or license holder on
 34 probation status and requirement of the certificate holder or
 35 license holder to:
 36 (A) report regularly to the department of homeland security
 37 upon the matters that are the basis of probation;
 38 (B) limit practice to those areas prescribed by the department
 39 of homeland security;
 40 (C) continue or renew professional education approved by the
 41 department of homeland security until a satisfactory degree of
 42 skill has been attained in those areas that are the basis of the
 43 probation; or
 44 (D) perform or refrain from performing any acts, including
 45 community restitution or service without compensation, that
 46 the department of homeland security considers appropriate to

1 the public interest or to the rehabilitation or treatment of the
2 certificate holder or license holder.

3 The department of homeland security may withdraw or modify
4 this probation if the department of homeland security finds after
5 a hearing that the deficiency that required disciplinary action is
6 remedied or that changed circumstances warrant a modification
7 of the order.

8 (c) If an applicant or a certificate holder or license holder has
9 engaged in or knowingly cooperated in fraud or material deception to
10 obtain a certificate or license, including cheating on the certification or
11 licensure examination, the department of homeland security may
12 rescind the certificate or license if it has been granted, void the
13 examination or other fraudulent or deceptive material, and prohibit the
14 applicant from reapplying for the certificate or license for a length of
15 time established by the department of homeland security.

16 (d) The department of homeland security may deny certification or
17 licensure to an applicant who would be subject to disciplinary sanctions
18 under subsection (b) if that person were a certificate holder or license
19 holder, has had disciplinary action taken against the applicant or the
20 applicant's certificate or license to practice in another state or
21 jurisdiction, or has practiced without a certificate or license in violation
22 of the law. A certified copy of the record of disciplinary action is
23 conclusive evidence of the other jurisdiction's disciplinary action.

24 (e) The department of homeland security may order a certificate
25 holder or license holder to submit to a reasonable physical or mental
26 examination if the certificate holder's or license holder's physical or
27 mental capacity to practice safely and competently is at issue in a
28 disciplinary proceeding. Failure to comply with a department of
29 homeland security order to submit to a physical or mental examination
30 makes a certificate holder or license holder liable to temporary
31 suspension under subsection (i).

32 (f) Except as provided under subsection (a), subsection (g), and
33 section 14.5 of this chapter, a certificate or license may not be denied,
34 revoked, or suspended because the applicant, certificate holder, or
35 license holder has been convicted of an offense. The acts from which
36 the applicant's, certificate holder's, or license holder's conviction
37 resulted may be considered as to whether the applicant or certificate
38 holder or license holder should be entrusted to serve the public in a
39 specific capacity.

40 (g) The department of homeland security may deny, suspend, or
41 revoke a certificate or license issued under this article if the individual
42 who holds or is applying for the certificate or license is convicted of
43 any of the following:

- 44 (1) Possession of cocaine or a narcotic drug under IC 35-48-4-6.
45 (2) Possession of methamphetamine under IC 35-48-4-6.1.
46 (3) Possession of a controlled substance under IC 35-48-4-7(a).

- 1 (4) Fraudulently obtaining a controlled substance under
2 IC 35-48-4-7(b).
- 3 (5) Manufacture of paraphernalia as a Class D felony under
4 IC 35-48-4-8.1(b).
- 5 (6) Dealing in paraphernalia as a Class D felony under
6 IC 35-48-4-8.5(b).
- 7 (7) Possession of paraphernalia as a Class D felony under
8 IC 35-48-4-8.3(b).
- 9 (8) Possession of marijuana, hash oil, hashish, **or** salvia or a
10 synthetic drug as a Class D felony under IC 35-48-4-11.
- 11 **(9) Possession of a synthetic drug or synthetic drug lookalike**
12 **substance as a Class D felony under IC 35-48-4-11.5.**
- 13 ~~(9)~~ **(10)** Maintaining a common nuisance under IC 35-48-4-13.
- 14 ~~(10)~~ **(11)** An offense relating to registration, labeling, and
15 prescription forms under IC 35-48-4-14.
- 16 ~~(11)~~ **(12)** Conspiracy under IC 35-41-5-2 to commit an offense
17 listed in subdivisions ~~(1) through (10)~~: **this section.**
- 18 ~~(12)~~ **(13)** Attempt under IC 35-41-5-1 to commit an offense listed
19 in subdivisions ~~(1) through (10)~~: **this section.**
- 20 ~~(13)~~ **(14)** An offense in any other jurisdiction in which the
21 elements of the offense for which the conviction was entered are
22 substantially similar to the elements of an offense described by
23 subdivisions ~~(1) through (12)~~: **in this section.**
- 24 (h) A decision of the department of homeland security under
25 subsections (b) through (g) may be appealed to the commission under
26 IC 4-21.5-3-7.
- 27 (i) The department of homeland security may temporarily suspend
28 a certificate holder's certificate or license holder's license under
29 IC 4-21.5-4 before a final adjudication or during the appeals process if
30 the department of homeland security finds that a certificate holder or
31 license holder would represent a clear and immediate danger to the
32 public's health, safety, or property if the certificate holder or license
33 holder were allowed to continue to practice.
- 34 (j) On receipt of a complaint or information alleging that a person
35 certified or licensed under this chapter or IC 16-31-3.5 has engaged in
36 or is engaging in a practice that is subject to disciplinary sanctions
37 under this chapter, the department of homeland security must initiate
38 an investigation against the person.
- 39 (k) The department of homeland security shall conduct a factfinding
40 investigation as the department of homeland security considers proper
41 in relation to the complaint.
- 42 (l) The department of homeland security may reinstate a certificate
43 or license that has been suspended under this section if the department
44 of homeland security is satisfied that the applicant is able to practice
45 with reasonable skill, competency, and safety to the public. As a
46 condition of reinstatement, the department of homeland security may

- 1 impose disciplinary or corrective measures authorized under this
2 chapter.
- 3 (m) The department of homeland security may not reinstate a
4 certificate or license that has been revoked under this chapter.
- 5 (n) The department of homeland security must be consistent in the
6 application of sanctions authorized in this chapter. Significant
7 departures from prior decisions involving similar conduct must be
8 explained in the department of homeland security's findings or orders.
- 9 (o) A certificate holder may not surrender the certificate holder's
10 certificate, and a license holder may not surrender the license holder's
11 license, without the written approval of the department of homeland
12 security, and the department of homeland security may impose any
13 conditions appropriate to the surrender or reinstatement of a
14 surrendered certificate or license.
- 15 (p) For purposes of this section, "certificate holder" means a person
16 who holds:
- 17 (1) an unlimited certificate;
18 (2) a limited or probationary certificate; or
19 (3) an inactive certificate.
- 20 (q) For purposes of this section, "license holder" means a person
21 who holds:
- 22 (1) an unlimited license;
23 (2) a limited or probationary license; or
24 (3) an inactive license."
- 25 Page 10, line 15, after "hashish," insert "**or**".
26 Page 10, line 15, after "salvia" delete ",",
27 Page 10, line 15, strike "or a".
28 Page 10 line 16, strike "synthetic drug".
29 Page 10, between lines 16 and 17, begin a new line block indented
30 and insert:
31 **"(9) Possession of a synthetic drug or synthetic drug lookalike**
32 **substance as a Class D felony under IC 35-48-4-11.5."**
- 33 Page 10, line 17, strike "(9)" and insert "**(10)**".
34 Page 10, line 18, strike "(10)" and insert "**(11)**".
35 Page 10, line 20, strike "(11)" and insert "**(12)**".
36 Page 10, line 21, strike "subdivisions (1) through (10)." and insert
37 **"this subsection."**
- 38 Page 10, line 22, strike "(12)" and insert "**(13)**".
39 Page 10, line 22, after "in" insert "**this subsection.**".
40 Page 10, strike line 23.
41 Page 10, line 24, strike "(13)" and insert "**(14)**".
42 Page 10, line 26, strike "subdivisions (1)" and insert **"this**
43 **subsection."**
- 44 Page 10, strike line 27.
45 Page 20, between lines 20 and 21, begin a new paragraph and insert:
46 "SECTION 9. IC 25-1-1.1-2, AS AMENDED BY P.L.78-2012,

1 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 2 UPON PASSAGE]: Sec. 2. Notwithstanding IC 25-1-7, a board, a
 3 commission, or a committee may suspend, deny, or revoke a license or
 4 certificate issued under this title by the board, the commission, or the
 5 committee without an investigation by the office of the attorney general
 6 if the individual who holds the license or certificate is convicted of any
 7 of the following and the board, commission, or committee determines,
 8 after the individual has appeared in person, that the offense affects the
 9 individual's ability to perform the duties of the profession:

- 10 (1) Possession of cocaine or a narcotic drug under IC 35-48-4-6.
 11 (2) Possession of methamphetamine under IC 35-48-4-6.1.
 12 (3) Possession of a controlled substance under IC 35-48-4-7(a).
 13 (4) Fraudulently obtaining a controlled substance under
 14 IC 35-48-4-7(b).
 15 (5) Manufacture of paraphernalia as a Class D felony under
 16 IC 35-48-4-8.1(b).
 17 (6) Dealing in paraphernalia as a Class D felony under
 18 IC 35-48-4-8.5(b).
 19 (7) Possession of paraphernalia as a Class D felony under
 20 IC 35-48-4-8.3(b).
 21 (8) Possession of marijuana, hash oil, hashish, **or** salvia or a
 22 synthetic drug as a Class D felony under IC 35-48-4-11.
 23 **(9) Possession of a synthetic drug or synthetic drug lookalike**
 24 **substance as a Class D felony under IC 35-48-4-11.5.**
 25 ~~(9)~~ **(10)** Maintaining a common nuisance under IC 35-48-4-13.
 26 ~~(10)~~ **(11)** An offense relating to registration, labeling, and
 27 prescription forms under IC 35-48-4-14.
 28 ~~(11)~~ **(12)** Conspiracy under IC 35-41-5-2 to commit an offense
 29 listed in subdivisions ~~(1)~~ through ~~(10)~~: **this section.**
 30 ~~(12)~~ **(13)** Attempt under IC 35-41-5-1 to commit an offense listed
 31 in subdivisions ~~(1)~~ through ~~(10)~~: **this section.**
 32 ~~(13)~~ **(14)** A sex crime under IC 35-42-4.
 33 ~~(14)~~ **(15)** A felony that reflects adversely on the individual's
 34 fitness to hold a professional license.
 35 ~~(15)~~ **(16)** An offense in any other jurisdiction in which the
 36 elements of the offense for which the conviction was entered are
 37 substantially similar to the elements of an offense described in
 38 this section."

39 Page 33, between lines 25 and 26, begin a new line block indented
 40 and insert:

41 **"(12) Any compound containing a 3-(1-adamantoyl)indole**
 42 **structure with substitution at the nitrogen atom of the indole**
 43 **ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl,**
 44 **cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-**
 45 **piperidinyl)methyl, or 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-**
 46 **pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or**

- 1 **tetrahydropyranylmethyl group, whether or not further**
 2 **substituted on the adamantyl ring system to any extent. An**
 3 **example of this structural class includes AM-1248."**
- 4 Page 33, line 26, delete "(12)" and insert "**(13)**".
- 5 Page 39, line 2, reset in roman "4-Bromo-2,
 6 5-Dimethoxyamphetamine (7391)".
- 7 Page 39, line 2, after "(7391)." delete "4-Bromo-2,".
- 8 Page 39, line 3, delete "5-dimethoxyphenethylamine (7392)".
- 9 Page 39, run in lines 2 through 3.
- 10 Page 39, line 6, strike "4-Bromo-2, 5-dimethoxyphenethylamine
 11 (7392)." and insert "**4-Bromo-2, 5-dimethoxyphenethylamine**
 12 **(7392)**".
- 13 Page 44, delete lines 18 through 20, begin a new line double block
 14 indented and insert:
- 15 "**(B) in, on, or within five hundred (500) feet of:**
 16 **(i) school property; or**
 17 **(ii) a public park;**
 18 **while a person under eighteen (18) years of age was**
 19 **reasonably expected to be present."**
- 20 Page 45, line 9, after "court" insert "**:**
 21 **(1)**".
- 22 Page 45, line 11, delete "year." and insert "**year if the person's**
 23 **violation of this section resulted in a criminal conviction; and**
 24 **(2) may recommend the suspension of the registered retail**
 25 **merchant certificate for the place of business for six (6)**
 26 **months if the person's violation of this section resulted in an**
 27 **adjudication that the person committed a civil infraction."**
- 28 Page 45, line 19, delete "one (1) year," and insert "**the period**
 29 **recommended by the court,"**
- 30 Page 45, between lines 20 and 21, begin a new paragraph and insert:
 31 "SECTION 22. IC 35-48-4-11, AS AMENDED BY P.L.78-2012,
 32 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 UPON PASSAGE]: Sec. 11. A person who:
 34 (1) knowingly or intentionally possesses (pure or adulterated)
 35 marijuana, hash oil, hashish, **or** salvia; or a synthetic drug;
 36 (2) knowingly or intentionally grows or cultivates marijuana; or
 37 (3) knowing that marijuana is growing on the person's premises,
 38 fails to destroy the marijuana plants;
 39 commits possession of marijuana, hash oil, hashish, **or** salvia, or a
 40 synthetic drug, a Class A misdemeanor. However, the offense is a Class
 41 D felony if the amount involved is more than thirty (30) grams of
 42 marijuana or two (2) grams of hash oil, hashish, **or** salvia, or a
 43 synthetic drug, or if the person has a prior conviction of an offense
 44 involving marijuana, hash oil, or hashish, **or** salvia, or a synthetic drug.
 45 SECTION 23. IC 35-48-4-11.5 IS ADDED TO THE INDIANA
 46 CODE AS A **NEW SECTION TO READ AS FOLLOWS**

1 [EFFECTIVE UPON PASSAGE]: **Sec. 11.5. (a) As used in this**
 2 **section, "synthetic drug lookalike substance" has the meaning set**
 3 **forth in IC 35-31.5-2-321.5(a)(3).**

4 **(b) A person who possesses a synthetic drug or synthetic drug**
 5 **lookalike substance commits possession of a synthetic drug or**
 6 **synthetic drug lookalike substance, a Class B infraction.**

7 **(c) A person who knowingly or intentionally possesses a**
 8 **synthetic drug or synthetic drug lookalike substance commits**
 9 **possession of a synthetic drug or synthetic drug lookalike**
 10 **substance, a Class A misdemeanor. However, the offense is a Class**
 11 **D felony if the person has a prior unrelated conviction under this**
 12 **section or under section 10.5 of this chapter.**

13 SECTION 24. IC 35-48-4-12, AS AMENDED BY P.L.78-2012,
 14 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 UPON PASSAGE]: Sec. 12. If a person who has no prior conviction of
 16 an offense under this article or under a law of another jurisdiction
 17 relating to controlled substances pleads guilty to possession of
 18 marijuana, hashish, salvia, or a synthetic drug **or synthetic drug**
 19 **lookalike substance** as a Class A misdemeanor, the court, without
 20 entering a judgment of conviction and with the consent of the person,
 21 may defer further proceedings and place the person in the custody of
 22 the court under such conditions as the court determines. Upon violation
 23 of a condition of the custody, the court may enter a judgment of
 24 conviction. However, if the person fulfills the conditions of the
 25 custody, the court shall dismiss the charges against the person. There
 26 may be only one (1) dismissal under this section with respect to a
 27 person. "

28 Renumber all SECTIONS consecutively.

(Reference is to SB 536 as printed February 1, 2013.)

Senator YOUNG R MICHAEL