
SENATE BILL No. 167

DIGEST OF INTRODUCED BILL

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

Synopsis: Purchase of ephedrine and pseudoephedrine. Makes the purchase of drugs containing more than three grams of ephedrine, pseudoephedrine, or both, in one week a Class A misdemeanor instead of a Class C misdemeanor.

Effective: July 1, 2010.

Charbonneau

January 5, 2010, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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SENATE BILL No. 167



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.186-2007,
2 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2010]: 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 one hundred twenty
 16 (120) milligrams 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) "Suspicious order" means a sale or transfer of a drug
 21 containing ephedrine or pseudoephedrine if the sale or transfer:
 22 (A) is a sale or transfer that the retail distributor, wholesaler,
 23 or manufacturer is required to report to the United States Drug
 24 Enforcement Administration;
 25 (B) appears suspicious to the retail distributor, wholesaler, or
 26 manufacturer in light of the recommendations contained in
 27 Appendix A of the report to the United States attorney general
 28 by the suspicious orders task force under the federal
 29 Comprehensive Methamphetamine Control Act of 1996; or
 30 (C) is for cash or a money order in a total amount of at least
 31 two hundred dollars (\$200).
 32 (6) "Unusual theft" means the theft or unexplained disappearance
 33 from a particular retail store of drugs containing ten (10) grams or
 34 more of ephedrine, pseudoephedrine, or both in a twenty-four (24)
 35 hour period.
 36 (c) This subsection does not apply to a convenience package. A
 37 person may sell a drug that contains the active ingredient of ephedrine,
 38 pseudoephedrine, or both only if the person complies with the
 39 following conditions:
 40 (1) The person does not sell the drug to a person less than
 41 eighteen (18) years of age.
 42 (2) The person does not sell drugs containing more than three (3)

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1 grams of ephedrine or pseudoephedrine, or both in one (1)
 2 transaction.
 3 (3) The person requires:
 4 (A) the purchaser to produce a state or federal identification
 5 card;
 6 (B) the purchaser to complete a paper or an electronic log in
 7 a format approved by the state police department with the
 8 purchaser's name, address, and driver's license or other
 9 identification number; and
 10 (C) the clerk who is conducting the transaction to initial or
 11 electronically record the clerk's identification on the log.
 12 Records from the completion of a log must be retained for at least
 13 two (2) years. A law enforcement officer has the right to inspect
 14 and copy a log or the records from the completion of a log in
 15 accordance with state and federal law. A person may not sell or
 16 release a log or the records from the completion of a log for a
 17 commercial purpose. The Indiana criminal justice institute may
 18 obtain information concerning a log or the records from the
 19 completion of a log from a law enforcement officer if the
 20 information may not be used to identify a specific individual and
 21 is used only for statistical purposes. A retailer who in good faith
 22 releases information maintained under this subsection is immune
 23 from civil liability unless the release constitutes gross negligence
 24 or intentional, wanton, or willful misconduct. This subdivision
 25 expires June 30, 2012.
 26 (4) The person stores the drug:
 27 (A) behind a counter in an area inaccessible to a customer or
 28 in a locked display case that makes the drug unavailable to a
 29 customer without the assistance of an employee; or
 30 (B) directly in front of the pharmacy counter in the direct line
 31 of sight of an employee at the pharmacy counter, in an area
 32 under constant video monitoring, if the drug is sold in a retail
 33 establishment that:
 34 (i) is a pharmacy; or
 35 (ii) contains a pharmacy that is open for business.
 36 (d) A person may not purchase drugs containing more than three (3)
 37 grams of ephedrine, pseudoephedrine, or both in one (1) week.
 38 (e) This subsection only applies to convenience packages. A person
 39 may not sell drugs containing more than one hundred twenty (120)
 40 milligrams of ephedrine or pseudoephedrine, or both in any one (1)
 41 transaction if the drugs are sold in convenience packages. A person
 42 who sells convenience packages must secure the convenience packages

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1 in at least one (1) of the following ways:

2 (1) The convenience package must be stored not more than thirty
3 (30) feet away from a checkout station or counter and must be in
4 the direct line of sight of an employee at the checkout station or
5 counter.

6 (2) The convenience package must be protected by a reliable
7 anti-theft device that uses package tags and detection alarms
8 designed to prevent theft.

9 (3) The convenience package must be stored in restricted access
10 shelving that permits a purchaser to remove not more than one (1)
11 package every fifteen (15) seconds.

12 (4) The convenience package must be stored in an area that is
13 under constant video monitoring, and a sign placed near the
14 convenience package must warn that the area is under constant
15 video monitoring.

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

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

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

29 (i) **Except as provided in subsection (j),** a person who knowingly
30 or intentionally violates this section commits a Class C misdemeanor.
31 However, the offense is a Class A misdemeanor if the person has a
32 prior unrelated conviction under this section.

33 ~~(j) Before June 30, 2007, the state police department shall submit a~~
34 ~~report to the legislative council detailing the effectiveness of this~~
35 ~~section in reducing the illicit production of methamphetamine. The~~
36 ~~report must describe the number of arrests or convictions that are~~
37 ~~attributable to the identification and logging requirements contained in~~
38 ~~this section; and must include recommendations for future action. The~~
39 ~~report must be in an electronic format under IC 5-14-6.~~

40 **(j) A person who knowingly or intentionally violates subsection**
41 **(d) commits a Class A misdemeanor.**

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