

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6746

BILL NUMBER: SB 234

NOTE PREPARED: Feb 21, 2012

BILL AMENDED: Feb 20, 2012

SUBJECT: Synthetic Drugs (Including "Bath Salts").

FIRST AUTHOR: Sen. Alting

FIRST SPONSOR: Rep. M. Smith

BILL STATUS: As Passed House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill changes references to "synthetic cannabinoids" to "synthetic drugs". It adds additional chemical compounds (including some compounds sold as "bath salts") to the definition of synthetic drugs and expands the definition to encompass certain chemical compounds that are structurally related to listed synthetic drugs.

The bill authorizes the Board of Pharmacy to adopt emergency rules to define certain compounds as synthetic drugs if these compounds are scheduled by: (1) the DEA; or (2) another state. It provides that an emergency rule becomes effective 30 days after it is filed with the publisher and expires on June 30 of the calendar year following its adoption.

The bill provides that if the Department of State Revenue finds that a person has been convicted of selling or offering to sell a synthetic drug that was offered for sale by a retail merchant in a place of business for which the retail merchant has been issued a registered retail merchant certificate, the Department: (1) shall suspend the registered retail merchant certificate for the place of business for one year; and (2) may not issue another retail merchant certificate for one year to any person that applied for or made a retail transaction under the suspended retail merchant certificate or that owned or co-owned, directly or indirectly, or was an officer, a director, a manager, or a partner of the retail merchant that was issued the suspended retail merchant certificate.

The bill makes technical corrections.

Effective Date: Upon Passage.

Explanation of State Expenditures: The authorization of the Board of Pharmacy to adopt emergency rules to define certain compounds as synthetic drugs should have no direct fiscal impact.

The addition of certain chemical compounds to and the expansion of the definition of synthetic drug as an element of some felony and misdemeanor drug offenses may increase the number of offenders found guilty of these offenses. However, there are no data available to indicate how many more people may be convicted of these offenses as a result. Also, the amount of enforcement necessary to oversee certain licensed or certified professions because of the additions of specified chemical compounds to the offenses could increase costs for certain state agencies, boards, commissions, and committees.

The amount of property forfeitures could also increase under the bill, which could offset some police costs or increase funds deposited in the Common School Fund.

Drug Offenses: The following offenses are affected by the inclusion of a synthetic drug in the elements of the crime.

- Corrupt Business Influence, Class C felony.
- Dealing in Paraphernalia, Class A misdemeanor.
- Reckless Dealing in Paraphernalia, Class B misdemeanor.
- Dealing in Marijuana, Hash Oil, or Hashish, Class A misdemeanor.
- Possession of Marijuana, Hash Oil, or Hashish, Class A misdemeanor.

A Class C felony is punishable by a prison term ranging from 2 to 8 years, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$18,836 in FY 2011. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$3,318 annually, or \$9.09 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$75,591 in FY 2011. The average length of stay in Department of Correction (DOC) facilities for all Class C felony offenders is approximately two years.

Licensed or Certified Professionals: The bill would minimally increase regulatory costs to include convictions concerning the additional chemical compounds as synthetic drugs as causes for which the Department of Homeland Security, the Department of Education, or a board, commission, or committee could deny, suspend, or revoke a certificate or license of an emergency medical services provider, a licensed elevator contractor, a school teacher, or a licensed or regulated person.

Forfeiture: The bill could increase the forfeiture of vehicles and money or monetary instruments, weapons, communication devices, or property used to commit, attempt to commit, or a conspire to commit dealing in a synthetic drug. To the extent that the court would notify the Bureau of Motor Vehicles (BMV) and the BMV produces a clear title for a seized vehicle, costs for the BMV could increase minimally.

(Revised) *Department of Revenue:* The Department of Revenue could have expenses associated with the holding of a public hearing concerning the suspension of a registered retail merchant certificate when the business was involved in the selling of or offering to sell a synthetic drug. Any additional expense could probably be paid from the Department's current budget.

Explanation of State Revenues: *Drug Offenses:* If additional court cases occur and fines are collected,

revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class C felony is \$10,000, \$5,000 for a Class A misdemeanor, and \$1,000 for a Class B misdemeanor. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$5), judicial salaries fee (\$19), public defense administration fee (\$5), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$2) are deposited into the state General Fund.

In addition, persons convicted of a drug-related offense may also be liable for a drug abuse, prosecution, interdiction and correction fee ranging between \$200 and \$1,000. The revenue collected from this fee is deposited in the state user fee fund and distributed to state and local programs.

Forfeiture: The proceeds from the sale of seized property are distributed first to the county sheriff to cover sale costs, then to any person holding a valid lien or having an interest in the property, and then to the Common School Fund as ordered by the court.

Explanation of Local Expenditures: *Drug Offenses:* If more Class C felony offense defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. A Class A misdemeanor is punishable by up to one year in jail and Class B misdemeanor is punishable buy up to 180 days in jail. The average cost per day is approximately \$44.

Forfeiture: The prosecuting attorney for the county in which the seizure occurred may cause an action for reimbursement of law enforcement costs to be brought by filing a complaint in the circuit, superior, or county court of the jurisdiction and may retain an attorney to bring the action.

Explanation of Local Revenues: *Drug Offenses:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

In addition, if a person is convicted of a drug-related offense and the county has established a weed control board, a sentencing court may assess a marijuana eradication fee of not more than \$300. Revenue collected from the marijuana eradication fee is deposited into the county user fee fund.

The court may also assess an alcohol and drug services program fee of not more than \$300 if a local government has established an alcohol and drug services program. Revenue collected from the alcohol and drug services program fee is deposited in the county or city or town user fee fund.

Forfeiture: A county sheriff may retain proceeds from the sale of a seized property to offset costs associated with its sale.

State Agencies Affected: DOC; Department of Homeland Security; Department of Education; BMV; licensing

or certifying boards, commissions, and committees.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association; Department of Correction.

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