

HOUSE BILL No. 1382

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-30-2-152.3; IC 35-31.5-2; IC 35-48.

Synopsis: Ephedrine and pseudoephedrine. Provides that materials, compounds, mixtures, or preparations that contain ephedrine or pseudoephedrine are schedule III controlled substances that may be dispensed only by prescription. Repeals: (1) the law concerning the sale of drugs that contain ephedrine and pseudoephedrine without a prescription; and (2) provisions related to that law.

Effective: July 1, 2015.

Riecken

January 14, 2015, read first time and referred to Committee on Public Health.



First Regular Session of the 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1382

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 IC 34-30-2-152.3 IS REPEALED [EFFECTIVE JULY
- 2 1, 2015]. ~~Sec. 152.3. IC 35-48-4-14.7 (Concerning a pharmacy or~~
- 3 ~~NPLEx retailer who discloses information concerning the sale of a~~
- 4 ~~product containing ephedrine or pseudoephedrine).~~
- 5 SECTION 2. IC 35-31.5-2-61 IS REPEALED [EFFECTIVE JULY
- 6 1, 2015]. ~~Sec. 61. "Constant video monitoring"; for purposes of~~
- 7 ~~IC 35-48-4-14.7; has the meaning set forth in IC 35-48-4-14.7(b)(1).~~
- 8 SECTION 3. IC 35-31.5-2-66 IS REPEALED [EFFECTIVE JULY
- 9 1, 2015]. ~~Sec. 66. "Convenience package"; for purposes of~~
- 10 ~~IC 35-48-4-14.7; has the meaning set forth in IC 35-48-4-14.7(b)(2).~~
- 11 SECTION 4. IC 35-31.5-2-120 IS REPEALED [EFFECTIVE JULY
- 12 1, 2015]. ~~Sec. 120. "Ephedrine"; for purposes of IC 35-48-4-14.7; has~~
- 13 ~~the meaning set forth in IC 35-48-4-14.7(b)(3).~~
- 14 SECTION 5. IC 35-31.5-2-256 IS REPEALED [EFFECTIVE JULY
- 15 1, 2015]. ~~Sec. 256. "Pseudoephedrine"; for purposes of~~



1 ~~IC 35-48-4-14.7, has the meaning set forth in IC 35-48-4-14.7.~~

2 SECTION 6. IC 35-31.5-2-279 IS REPEALED [EFFECTIVE JULY
3 1, 2015]. Sec. 279: "Retailer"; for purposes of IC 35-48-4-14.7, has the
4 meaning set forth in IC 35-48-4-14.7.

5 SECTION 7. IC 35-31.5-2-320 IS REPEALED [EFFECTIVE JULY
6 1, 2015]. Sec. 320: "Suspicious order"; for purposes of IC 35-48-4-14.7,
7 has the meaning set forth in IC 35-48-4-14.7.

8 SECTION 8. IC 35-31.5-2-343 IS REPEALED [EFFECTIVE JULY
9 1, 2015]. Sec. 343: "Unusual theft"; for purposes of IC 35-48-4-14.7,
10 has the meaning set forth in IC 35-48-4-14.7.

11 SECTION 9. IC 35-48-2-8, AS AMENDED BY P.L.22-2008,
12 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2015]: Sec. 8. (a) The controlled substances listed in this
14 section are included in schedule III.

15 (b) Stimulants. Unless specifically excepted or unless listed in
16 another schedule, any material, compound, mixture, or preparation
17 which contains any quantity of the following substances having a
18 stimulant effect on the central nervous system, including its salts,
19 isomers (whether optical, position, or geometric), and salts of such
20 isomers whenever the existence of such salts, isomers, and salts of
21 isomers is possible within the specific chemical designation:

- 22 (1) Those compounds, mixtures, or preparations in dosage unit
23 form containing any stimulant substances listed in schedule II
24 which compounds, mixtures, or preparations were listed on April
25 1, 1986, as excepted compounds under 21 CFR 1308.32, and any
26 other drug of the quantitative composition shown in that list for
27 those drugs or that is the same except that it contains a lesser
28 quantity of controlled substances (1405).
- 29 (2) Benzphetamine (1228).
- 30 (3) Chlorphentermine (1645).
- 31 (4) Clortermine (1647).
- 32 (5) Phendimetrazine (1615).

33 (c) Depressants. Unless specifically excepted or unless listed in
34 another schedule, any material, compound, mixture, or preparation
35 which contains any quantity of the following substances having a
36 depressant effect on the central nervous system:

- 37 (1) Any compound, mixture, or preparation containing:
 - 38 (A) amobarbital (2126);
 - 39 (B) secobarbital (2316);
 - 40 (C) pentobarbital (2271); or
 - 41 (D) any of their salts;

42 and one (1) or more other active medicinal ingredients which are



- 1 not listed in any schedule.
- 2 (2) Any suppository dosage form containing:
- 3 (A) amobarbital (2126);
- 4 (B) secobarbital (2316);
- 5 (C) pentobarbital (2271); or
- 6 (D) any of their salts;
- 7 and approved by the Food and Drug Administration for marketing
- 8 only as a suppository.
- 9 (3) Any substance which contains any quantity of a derivative of
- 10 barbituric acid, or any salt thereof (2100).
- 11 (4) Chlorhexadol (2510).
- 12 (5) Embutramide (2020).
- 13 (6) Lysergic acid (7300).
- 14 (7) Lysergic acid amide (7310).
- 15 (8) Methyprylon (2575).
- 16 (9) Sulfondiethylmethane (2600).
- 17 (10) Sulfonethylmethane (2605).
- 18 (11) Sulfonmethane (2610).
- 19 (12) A combination product containing Tiletamine and
- 20 Zolazepam or any salt thereof (Telazol) (7295).
- 21 (13) Any drug product containing gamma-hydroxybutyric acid,
- 22 including its salts, isomers, and salts of isomers, for which an
- 23 application is approved under section 505 of the federal Food,
- 24 Drug and Cosmetic Act, 21 U.S.C. 301 et seq. (2012).
- 25 (d) Nalorphine (a narcotic drug) (9400).
- 26 (e) Narcotic Drugs. Unless specifically excepted or unless listed in
- 27 another schedule, any material, compound, mixture, or preparation
- 28 containing any of the following narcotic drugs, or their salts calculated
- 29 as the free anhydrous base or alkaloid, in the following limited
- 30 quantities:
- 31 (1) Not more than 1.8 grams of codeine, per 100 milliliters or not
- 32 more than 90 milligrams per dosage unit, with an equal or greater
- 33 quantity of an isoquinoline alkaloid of opium (9803).
- 34 (2) Not more than 1.8 grams of codeine, per 100 milliliters or not
- 35 more than 90 milligrams per dosage unit, with one (1) or more
- 36 active, nonnarcotic ingredients in recognized therapeutic amounts
- 37 (9804).
- 38 (3) Not more than 300 milligrams of dihydrocodeinone, per 100
- 39 milliliters or not more than 15 milligrams per dosage unit, with a
- 40 fourfold or greater quantity of an isoquinoline alkaloid of opium
- 41 (9805).
- 42 (4) Not more than 300 milligrams of dihydrocodeinone, per 100



1 milliliters or not more than 15 milligrams per dosage unit, with
 2 one (1) or more active nonnarcotic ingredients in recognized
 3 therapeutic amounts (9806).

4 (5) Not more than 1.8 grams of dihydrocodeine, per 100 milliliters
 5 or not more than 90 milligrams per dosage unit, with one (1) or
 6 more active, nonnarcotic ingredients in recognized therapeutic
 7 amounts (9807).

8 (6) Not more than 300 milligrams of ethylmorphine, per 100
 9 milliliters or not more than 15 milligrams per dosage unit, with
 10 one (1) or more active, nonnarcotic ingredients in recognized
 11 therapeutic amounts (9808).

12 (7) Not more than 500 milligrams of opium per 100 milliliters or
 13 per 100 grams or not more than 25 milligrams per dosage unit,
 14 with one (1) or more active, nonnarcotic ingredients in recognized
 15 therapeutic amounts (9809).

16 (8) Not more than 50 milligrams of morphine, per 100 milliliters
 17 or per 100 grams with one (1) or more active nonnarcotic
 18 ingredients in recognized therapeutic amounts (9810).

19 (9) Buprenorphine (9064).

20 (f) Anabolic steroid (as defined in 21 U.S.C. 802(41)(A) and 21
 21 U.S.C. 802(41)(B)).

22 (g) The board shall except by rule any compound, mixture, or
 23 preparation containing any stimulant or depressant substance listed in
 24 subsections (b) through (e) from the application of any part of this
 25 article if the compound, mixture, or preparation contains one (1) or
 26 more active medicinal ingredients not having a stimulant or depressant
 27 effect on the central nervous system, and if the admixtures are included
 28 therein in combinations, quantity, proportion, or concentration that
 29 vitiate the potential for abuse of the substances which have a stimulant
 30 or depressant effect on the central nervous system.

31 (h) Any material, compound, mixture, or preparation which contains
 32 any quantity of Ketamine (7285).

33 (i) Hallucinogenic substances:

34 Dronabinol (synthetic) in sesame oil and encapsulated in a soft
 35 gelatin capsule in a United States Food and Drug Administration
 36 approved drug product (7369).

37 **(j) A material, compound, mixture, or preparation that contains**
 38 **a quantity of any of the following substances, pure or adulterated:**

39 **(1) Ephedrine.**

40 **(2) Pseudoephedrine.**

41 SECTION 10. IC 35-48-4-7, AS AMENDED BY P.L.158-2013,
 42 SECTION 633, IS AMENDED TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2015]: Sec. 7. (a) A person who, without a valid
 2 prescription or order of a practitioner acting in the course of the
 3 practitioner's professional practice, knowingly or intentionally
 4 possesses a controlled substance (pure or adulterated) classified in
 5 schedule I, II, III, or IV, except marijuana, hashish, salvia, or a
 6 synthetic cannabinoid, commits possession of a controlled substance,
 7 a Class A misdemeanor, except as provided in subsection (b).

8 (b) **Except as provided in section 14.5(b) of this chapter**, the
 9 offense is a Level 6 felony if the person commits the offense and an
 10 enhancing circumstance applies.

11 (c) A person who, without a valid prescription or order of a
 12 practitioner acting in the course of the practitioner's professional
 13 practice, knowingly or intentionally obtains:

14 (1) more than four (4) ounces of schedule V controlled substances
 15 containing codeine in any given forty-eight (48) hour period
 16 unless pursuant to a prescription;

17 (2) a schedule V controlled substance pursuant to written or
 18 verbal misrepresentation; or

19 (3) possession of a schedule V controlled substance other than by
 20 means of a prescription or by means of signing an exempt
 21 narcotic register maintained by a pharmacy licensed by the
 22 Indiana state board of pharmacy;

23 commits a Class A misdemeanor.

24 SECTION 11. IC 35-48-4-14.7 IS REPEALED [EFFECTIVE JULY
 25 1, 2015]. Sec. 14.7: (a) This section does not apply to the following:

26 (1) Ephedrine or pseudoephedrine dispensed pursuant to a
 27 prescription.

28 (2) The sale of a drug containing ephedrine or pseudoephedrine
 29 to a licensed health care provider, pharmacist, retail distributor,
 30 wholesaler, manufacturer, or an agent of any of these persons if
 31 the sale occurs in the regular course of lawful business activities.
 32 However, a retail distributor, wholesaler, or manufacturer is
 33 required to report a suspicious order to the state police department
 34 in accordance with subsection (g):

35 (3) The sale of a drug containing ephedrine or pseudoephedrine
 36 by a person who does not sell exclusively to walk-in customers for
 37 the personal use of the walk-in customers. However, if the person
 38 described in this subdivision is a retail distributor, wholesaler, or
 39 manufacturer, the person is required to report a suspicious order
 40 to the state police department in accordance with subsection (g):

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

42 (1) "Constant video monitoring" means the surveillance by an



- 1 automated camera that:
- 2 (A) records at least one (1) photograph or digital image every
- 3 ten (10) seconds;
- 4 (B) retains a photograph or digital image for at least
- 5 seventy-two (72) hours;
- 6 (C) has sufficient resolution and magnification to permit the
- 7 identification of a person in the area under surveillance; and
- 8 (D) stores a recorded photograph or digital image at a location
- 9 that is immediately accessible to a law enforcement officer.
- 10 (2) "Convenience package" means a package that contains a drug
- 11 having as an active ingredient not more than sixty (60) milligrams
- 12 of ephedrine or pseudoephedrine, or both.
- 13 (3) "Ephedrine" means pure or adulterated ephedrine.
- 14 (4) "Pharmacy or NPLeX retailer" means:
- 15 (A) a pharmacy, as defined in IC 25-26-13-2;
- 16 (B) a retailer containing a pharmacy, as defined in
- 17 IC 25-26-13-2; or
- 18 (C) a retailer that electronically submits the required
- 19 information to the National Precursor Log Exchange (NPLeX)
- 20 administered by the National Association of Drug Diversion
- 21 Investigators (NADDI).
- 22 (5) "Pseudoephedrine" means pure or adulterated
- 23 pseudoephedrine.
- 24 (6) "Retailer" means a grocery store, general merchandise store,
- 25 or other similar establishment. The term does not include a
- 26 pharmacy or NPLeX retailer.
- 27 (7) "Suspicious order" means a sale or transfer of a drug
- 28 containing ephedrine or pseudoephedrine if the sale or transfer:
- 29 (A) is a sale or transfer that the retail distributor, wholesaler,
- 30 or manufacturer is required to report to the United States Drug
- 31 Enforcement Administration;
- 32 (B) appears suspicious to the retail distributor, wholesaler, or
- 33 manufacturer in light of the recommendations contained in
- 34 Appendix A of the report to the United States attorney general
- 35 by the suspicious orders task force under the federal
- 36 Comprehensive Methamphetamine Control Act of 1996; or
- 37 (C) is for cash or a money order in a total amount of at least
- 38 two hundred dollars (\$200).
- 39 (8) "Unusual theft" means the theft or unexplained disappearance
- 40 from a particular pharmacy or NPLeX retailer of drugs containing
- 41 ten (10) grams or more of ephedrine, pseudoephedrine, or both in
- 42 a twenty-four (24) hour period.



1 (c) A drug containing ephedrine or pseudoephedrine may be sold
 2 only by a pharmacy or NPLEx retailer. Except as provided in
 3 subsection (f), a retailer may not sell a drug containing ephedrine or
 4 pseudoephedrine.

5 (d) A pharmacy or NPLEx retailer may sell a drug that contains the
 6 active ingredient of ephedrine, pseudoephedrine, or both only if the
 7 pharmacy or NPLEx retailer complies with the following conditions:

8 (1) The pharmacy or NPLEx retailer does not sell the drug to a
 9 person less than eighteen (18) years of age.

10 (2) The pharmacy or NPLEx retailer does not sell drugs
 11 containing more than:

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

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

17 (C) sixty-one and two-tenths (61.2) grams of ephedrine or
 18 pseudoephedrine, or both, to one (1) individual in a three
 19 hundred sixty-five (365) day period.

20 (3) The pharmacy or NPLEx retailer requires:

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

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

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

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

41 (4) The pharmacy or NPLEx retailer maintains a record of
 42 information for each sale of a nonprescription product containing



1 pseudoephedrine or ephedrine. Required information includes:

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

3 (B) the type of identification presented;

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

5 (D) the identification number; and

6 (E) the ephedrine or pseudoephedrine product purchased;
7 including the number of grams the product contains and the
8 date and time of the transaction.

9 (5) Beginning January 1, 2012, a pharmacy or NPLeX retailer
10 shall, except as provided in subdivision (6), before completing a
11 sale of an over-the-counter product containing pseudoephedrine
12 or ephedrine; electronically submit the required information to the
13 National Precursor Log Exchange (NPLeX) administered by the
14 National Association of Drug Diversion Investigators (NADDI);
15 if the NPLeX system is available to pharmacies or NPLeX
16 retailers in the state without a charge for accessing the system.
17 The pharmacy or NPLeX retailer may not complete the sale if the
18 system generates a stop sale alert.

19 (6) If a pharmacy or NPLeX retailer selling an over-the-counter
20 product containing ephedrine or pseudoephedrine experiences
21 mechanical or electronic failure of the electronic sales tracking
22 system and is unable to comply with the electronic sales tracking
23 requirement, the pharmacy or NPLeX retailer shall maintain a
24 written log or an alternative electronic recordkeeping mechanism
25 until the pharmacy or NPLeX retailer is able to comply with the
26 electronic sales tracking requirement.

27 (7) The pharmacy or NPLeX retailer stores the drug behind a
28 counter in an area inaccessible to a customer or in a locked
29 display case that makes the drug unavailable to a customer
30 without the assistance of an employee.

31 (e) A person may not purchase drugs containing more than:

32 (1) three and six-tenths (3.6) grams of ephedrine or
33 pseudoephedrine; or both, on one (1) day;

34 (2) seven and two-tenths (7.2) grams of ephedrine or
35 pseudoephedrine; or both, in a thirty (30) day period; or

36 (3) sixty-one and two-tenths (61.2) grams of ephedrine or
37 pseudoephedrine; or both, in a three hundred sixty-five (365) day
38 period.

39 These limits apply to the total amount of base ephedrine and
40 pseudoephedrine contained in the products and not to the overall
41 weight of the products.

42 (f) This subsection only applies to convenience packages. A retailer



1 may sell convenience packages under this section without complying
2 with the conditions listed in subsection (d):

3 (1) after June 30, 2013; and

4 (2) before January 1, 2014.

5 A retailer may not sell drugs containing more than sixty (60)
6 milligrams of ephedrine or pseudoephedrine, or both in any one (1)
7 transaction. A retailer who sells convenience packages must secure the
8 convenience packages behind the counter in an area inaccessible to a
9 customer or in a locked display case that makes the drug unavailable
10 to a customer without the assistance of an employee. A retailer may not
11 sell a drug containing ephedrine or pseudoephedrine after December
12 31, 2013.

13 (g) A retail distributor, wholesaler, or manufacturer shall report a
14 suspicious order to the state police department in writing.

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

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

27 (j) A person who knowingly or intentionally violates this section
28 commits a Class C misdemeanor. However, the offense is a Class A
29 misdemeanor if the person has a prior unrelated conviction under this
30 section.

31 (k) A pharmacy or NPLeX retailer that uses the electronic sales
32 tracking system in accordance with this section is immune from civil
33 liability for any act or omission committed in carrying out the duties
34 required by this section, unless the act or omission was due to
35 negligence, recklessness, or deliberate or wanton misconduct. A
36 pharmacy or NPLeX retailer is immune from liability to a third party
37 unless the pharmacy or NPLeX retailer has violated a provision of this
38 section and the third party brings an action based on the pharmacy's or
39 NPLeX retailer's violation of this section.

40 (l) The following requirements apply to the NPLeX:

41 (1) Information contained in the NPLeX may be shared only with
42 law enforcement officials:



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

