



March 27, 2015

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## ENGROSSED SENATE BILL No. 294

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DIGEST OF SB 294 (Updated March 26, 2015 7:22 am - DI 84)

**Citations Affected:** IC 16-42; IC 25-26.

**Synopsis:** Legend drug investigations. Provides that certain laws concerning obtaining a legend drug or the validity of a prescription or drug order do not apply to actions of a person, practitioner, or pharmaceutical manufacturer performed in an investigation of a pharmaceutical manufacturer's legend drug that is suspected of being counterfeited, adulterated, or misbranded. Requires a pharmaceutical manufacturer that collects drug samples during an investigation to maintain records of the drug samples and to make the records available to certain law enforcement agencies. Prohibits a person from owning or operating a store, facility, or other place of business in Indiana where: (1) prescriptions are accepted to be filled; or (2) prescription drugs or devices are ordered, offered or advertised for sale, or paid for; unless the person has a pharmacy permit. Excludes mail order and Internet based pharmacies to the extent that they are allowed to operate under state law.

**Effective:** July 1, 2015.

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**Miller Patricia, Crider, Breaux,  
Charbonneau, Brown L, Grooms,  
Mrvan, Randolph**

(HOUSE SPONSORS — BROWN T, BROWN C, CLERE, DAVISSON)

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January 8, 2015, read first time and referred to Committee on Health & Provider Services.  
February 19, 2015, amended, reported favorably — Do Pass.  
February 23, 2015, read second time, amended, ordered engrossed.  
February 24, 2015, engrossed. Read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

March 5, 2015, read first time and referred to Committee on Public Health.  
March 26, 2015, reported — Do Pass.

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March 27, 2015

First Regular Session 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.

## ENGROSSED SENATE BILL No. 294

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A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 16-42-19-16 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 16. **Except as**  
3 **provided in section 30 of this chapter**, a person may not do any of the  
4 following:  
5 (1) Obtain or attempt to obtain a legend drug or procure or  
6 attempt to procure the administration of a legend drug by any of  
7 the following:  
8 (A) Fraud, deceit, misrepresentation, or subterfuge.  
9 (B) The forgery or alteration of a prescription, drug order, or  
10 written order.  
11 (C) The concealment of a material fact.  
12 (D) The use of a false name or the giving of a false address.  
13 (2) Communicate information to a physician in an effort  
14 unlawfully to procure a legend drug or unlawfully to procure the  
15 administration of a legend drug. Such a communication is not  
16 considered a privileged communication.

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1 (3) Intentionally make a false statement in a prescription, drug  
2 order, order, report, or record required by this chapter.

3 (4) For the purpose of obtaining a legend drug, falsely assume the  
4 title of or represent oneself to be a manufacturer, wholesaler,  
5 pharmacist, physician, dentist, veterinarian, or other person.

6 (5) Make or utter a false or forged prescription or false drug order  
7 or forged written order.

8 (6) Affix a false or forged label to a package or receptacle  
9 containing legend drugs. This subdivision does not apply to law  
10 enforcement agencies or their representatives while engaged in  
11 enforcing this chapter.

12 (7) Dispense a legend drug except as provided in this chapter.

13 SECTION 2. IC 16-42-19-20 IS AMENDED TO READ AS  
14 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 20. (a) **Except as**  
15 **provided in section 30 of this chapter**, a prescription or drug order for  
16 a legend drug is not valid unless the prescription or drug order is issued  
17 for a legitimate medical purpose by a practitioner acting in the usual  
18 course of the practitioner's business.

19 (b) A practitioner may not knowingly issue an invalid prescription  
20 or drug order for a legend drug.

21 (c) A pharmacist may not knowingly fill an invalid prescription or  
22 drug order for a legend drug.

23 SECTION 3. IC 16-42-19-27, AS AMENDED BY P.L.158-2013,  
24 SECTION 248, IS AMENDED TO READ AS FOLLOWS  
25 [EFFECTIVE JULY 1, 2015]: Sec. 27. (a) A person who knowingly  
26 violates this chapter, except sections 24, ~~and~~ 25(b), **and 30(c)** of this  
27 chapter, commits a Level 6 felony. However, the offense is a Level 5  
28 felony if the person has a prior conviction under this subsection or  
29 IC 16-6-8-10(a) before its repeal.

30 (b) A person who violates section 24 of this chapter commits a Class  
31 B misdemeanor.

32 (c) A person who violates section 25(b) of this chapter commits  
33 dealing in an anabolic steroid, a Level 5 felony. However, the offense  
34 is a Level 4 felony if the person delivered the anabolic steroid to a  
35 person who is:

36 (1) less than eighteen (18) years of age; and

37 (2) at least three (3) years younger than the delivering person.

38 **(d) A person who violates section 30(c) of this chapter commits**  
39 **a Class A infraction.**

40 SECTION 4. IC 16-42-19-30 IS ADDED TO THE INDIANA  
41 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
42 [EFFECTIVE JULY 1, 2015]: **Sec. 30. (a) Sections 16 and 20 of this**



1 chapter do not apply to the actions of a:

- 2 (1) person who is employed or retained as an investigator by  
 3 a pharmaceutical manufacturer described in subdivision (3);  
 4 (2) practitioner; or  
 5 (3) pharmaceutical manufacturer that is approved by the  
 6 federal Food and Drug Administration;

7 performed in an investigation of a pharmaceutical manufacturer's  
 8 legend drug that is suspected of being counterfeited, adulterated,  
 9 or misbranded.

10 (b) A drug sample collected during an investigation described  
 11 in subsection (a) may only be used for testing or a civil or criminal  
 12 action. A drug sample collected during an investigation may not be  
 13 resold or provided for human consumption.

14 (c) A pharmaceutical manufacturer that collects drug samples  
 15 during an investigation described in subsection (a) shall:

- 16 (1) maintain records of the drug samples; and  
 17 (2) make these records available, at a reasonable time, to law  
 18 enforcement agencies or the agencies' representatives in the  
 19 enforcement of this chapter.

20 SECTION 5. IC 25-26-13-33 IS ADDED TO THE INDIANA  
 21 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 22 [EFFECTIVE JULY 1, 2015]: Sec. 33. (a) This section does not apply  
 23 to a mail order or Internet based pharmacy (as defined by  
 24 IC 25-26-18-1) to the extent that the pharmacy is allowed to  
 25 operate under IC 25-26-18.

26 (b) A person may not own or operate a store, facility, or other  
 27 place of business in Indiana where:

- 28 (1) prescriptions are accepted to be filled; or  
 29 (2) prescription drugs or devices are:  
 30 (A) ordered;  
 31 (B) offered or advertised for sale; or  
 32 (C) paid for;

33 unless the person has a pharmacy permit issued under this chapter.



## COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 294, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 16-42-19-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 16. **Except as provided in section 30 of this chapter**, a person may not do any of the following:

- (1) Obtain or attempt to obtain a legend drug or procure or attempt to procure the administration of a legend drug by any of the following:
  - (A) Fraud, deceit, misrepresentation, or subterfuge.
  - (B) The forgery or alteration of a prescription, drug order, or written order.
  - (C) The concealment of a material fact.
  - (D) The use of a false name or the giving of a false address.
- (2) Communicate information to a physician in an effort unlawfully to procure a legend drug or unlawfully to procure the administration of a legend drug. Such a communication is not considered a privileged communication.
- (3) Intentionally make a false statement in a prescription, drug order, order, report, or record required by this chapter.
- (4) For the purpose of obtaining a legend drug, falsely assume the title of or represent oneself to be a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, or other person.
- (5) Make or utter a false or forged prescription or false drug order or forged written order.
- (6) Affix a false or forged label to a package or receptacle containing legend drugs. This subdivision does not apply to law enforcement agencies or their representatives while engaged in enforcing this chapter.
- (7) Dispense a legend drug except as provided in this chapter.

SECTION 2. IC 16-42-19-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 20. (a) **Except as provided in section 30 of this chapter**, a prescription or drug order for a legend drug is not valid unless the prescription or drug order is issued for a legitimate medical purpose by a practitioner acting in the usual



course of the practitioner's business.

(b) A practitioner may not knowingly issue an invalid prescription or drug order for a legend drug.

(c) A pharmacist may not knowingly fill an invalid prescription or drug order for a legend drug."

Page 1, line 5, delete "person;" and insert "**person who is employed or retained as an investigator by a pharmaceutical manufacturer described in subdivision (3);**".

Page 1, between lines 15 and 16, begin a new paragraph and insert: "**(c) A pharmaceutical manufacturer that collects drug samples during an investigation described in subsection (a) shall:**

**(1) maintain records of the drug samples; and**

**(2) make these records available, at a reasonable time, to law enforcement agencies or the agencies' representatives in the enforcement of this chapter."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 294 as introduced.)

MILLER PATRICIA, Chairperson

Committee Vote: Yeas 10, Nays 0.

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#### SENATE MOTION

Madam President: I move that Senate Bill 294 be amended to read as follows:

Page 2, between lines 22 and 23, begin a new paragraph and insert:

"SECTION 3. IC 16-42-19-27, AS AMENDED BY P.L.158-2013, SECTION 248, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 27. (a) A person who knowingly violates this chapter, except sections 24, ~~and~~ 25(b), **and 30(c)** of this chapter, commits a Level 6 felony. However, the offense is a Level 5 felony if the person has a prior conviction under this subsection or IC 16-6-8-10(a) before its repeal.

(b) A person who violates section 24 of this chapter commits a Class B misdemeanor.

(c) A person who violates section 25(b) of this chapter commits dealing in an anabolic steroid, a Level 5 felony. However, the offense is a Level 4 felony if the person delivered the anabolic steroid to a

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person who is:

- (1) less than eighteen (18) years of age; and
- (2) at least three (3) years younger than the delivering person.

**(d) A person who violates section 30(c) of this chapter commits a Class A infraction."**

Renumber all SECTIONS consecutively.

(Reference is to SB 294 as printed February 20, 2015.)

MILLER PATRICIA

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred Senate Bill 294, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to SB 294 as reprinted February 24, 2015.)

CLERE

Committee Vote: Yeas 11, Nays 0

