

HOUSE BILL No. 1390

DIGEST OF INTRODUCED BILL

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

Synopsis: Ephedrine and pseudoephedrine. Changes the amounts of drugs containing ephedrine or pseudoephedrine that a pharmacy or National Precursor Log Exchange (NPLEx) retailer may sell and that a person may purchase without a prescription. Provides that a person who purchases the statutory maximum amount of over-the-counter drugs containing ephedrine or pseudoephedrine may obtain additional drugs containing ephedrine or pseudoephedrine with a valid prescription or order of a practitioner.

Effective: July 1, 2015.

McNamara, Macer, Smaltz

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. 1390

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.193-2013,
2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: 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 (g).
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



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



- 1 (C) is for cash or a money order in a total amount of at least
 2 two hundred dollars (\$200).
- 3 (8) "Unusual theft" means the theft or unexplained disappearance
 4 from a particular pharmacy or NPLeX retailer of drugs containing
 5 ten (10) grams or more of ephedrine, pseudoephedrine, or both in
 6 a twenty-four (24) hour period.
- 7 (c) A drug containing ephedrine or pseudoephedrine may be sold
 8 only by a pharmacy or NPLeX retailer. ~~Except as provided in~~
 9 ~~subsection (f), a retailer may not sell a drug containing ephedrine or~~
 10 ~~pseudoephedrine.~~
- 11 (d) A pharmacy or NPLeX retailer may sell a drug that contains the
 12 active ingredient of ephedrine, pseudoephedrine, or both only if the
 13 pharmacy or NPLeX retailer complies with the following conditions:
- 14 (1) The pharmacy or NPLeX retailer does not sell the drug to a
 15 person less than eighteen (18) years of age.
- 16 (2) The pharmacy or NPLeX retailer does not sell drugs
 17 containing more than:
- 18 (A) ~~three and six-tenths (3.6) grams~~ **seven hundred fifty**
 19 **(750) milligrams** of ephedrine or pseudoephedrine, or both, to
 20 one (1) individual ~~on one (1) day;~~
- 21 ~~(B) seven and two-tenths (7.2) grams of ephedrine or~~
 22 ~~pseudoephedrine, or both, to one (1) individual~~ in a thirty (30)
 23 day period; or
- 24 ~~(C) (B) sixty-one and two-tenths (61.2) nine (9) grams of~~
 25 ephedrine or pseudoephedrine, or both, to one (1) individual
 26 in a three hundred sixty-five (365) day period.
- 27 (3) The pharmacy or NPLeX retailer requires:
- 28 (A) the purchaser to produce a valid government issued photo
 29 identification card showing the date of birth of the person;
- 30 (B) the purchaser to sign a written or electronic log attesting
 31 to the validity of the information; and
- 32 (C) the clerk who is conducting the transaction to initial or
 33 electronically record the clerk's identification on the log.
- 34 Records from the completion of a log must be retained for at least
 35 two (2) years. A law enforcement officer has the right to inspect
 36 and copy a log or the records from the completion of a log in
 37 accordance with state and federal law. A pharmacy or NPLeX
 38 retailer may not sell or release a log or the records from the
 39 completion of a log for a commercial purpose. The Indiana
 40 criminal justice institute may obtain information concerning a log
 41 or the records from the completion of a log from a law
 42 enforcement officer if the information may not be used to identify



1 a specific individual and is used only for statistical purposes. A
 2 pharmacy or NPLEx retailer that in good faith releases
 3 information maintained under this subsection is immune from
 4 civil liability unless the release constitutes gross negligence or
 5 intentional, wanton, or willful misconduct.

6 (4) The pharmacy or NPLEx retailer maintains a record of
 7 information for each sale of a nonprescription product containing
 8 pseudoephedrine or ephedrine. Required information includes:

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

10 (B) the type of identification presented;

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

12 (D) the identification number; and

13 (E) the ephedrine or pseudoephedrine product purchased,
 14 including the number of grams the product contains and the
 15 date and time of the transaction.

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

26 (6) If a pharmacy or NPLEx retailer selling an over-the-counter
 27 product containing ephedrine or pseudoephedrine experiences
 28 mechanical or electronic failure of the electronic sales tracking
 29 system and is unable to comply with the electronic sales tracking
 30 requirement, the pharmacy or NPLEx retailer shall maintain a
 31 written log or an alternative electronic recordkeeping mechanism
 32 until the pharmacy or NPLEx retailer is able to comply with the
 33 electronic sales tracking requirement.

34 (7) The pharmacy or NPLEx retailer stores the drug behind a
 35 counter in an area inaccessible to a customer or in a locked
 36 display case that makes the drug unavailable to a customer
 37 without the assistance of an employee.

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

39 (1) ~~three and six-tenths (3.6) grams~~ **seven hundred fifty (750)**
 40 **milligrams** of ephedrine or pseudoephedrine, or both, ~~on one (1)~~
 41 ~~day;~~

42 (2) ~~seven and two-tenths (7.2) grams of ephedrine or~~



1 pseudoephedrine, or both, in a thirty (30) day period; or
 2 ~~(3) (2) sixty-one and two-tenths (61.2)~~ **nine (9)** grams of
 3 ephedrine or pseudoephedrine, or both, in a three hundred
 4 sixty-five (365) day period.

5 These limits apply to the total amount of base ephedrine and
 6 pseudoephedrine contained in the products and not to the overall
 7 weight of the products.

8 ~~(f) This subsection only applies to convenience packages. A retailer
 9 may sell convenience packages under this section without complying
 10 with the conditions listed in subsection (d):~~

11 ~~(1) after June 30, 2013; and~~

12 ~~(2) before January 1, 2014.~~

13 A retailer may not sell drugs containing more than sixty ~~(60)~~
 14 milligrams of ephedrine or pseudoephedrine; or both in any one ~~(1)~~
 15 transaction. A retailer who sells convenience packages must secure the
 16 convenience packages behind the counter in an area inaccessible to a
 17 customer or in a locked display case that makes the drug unavailable
 18 to a customer without the assistance of an employee. A retailer may not
 19 sell a drug containing ephedrine or pseudoephedrine after December
 20 31, 2013.

21 **(f) A person who meets the monthly limits for ephedrine or
 22 pseudoephedrine described in subsection (e) may obtain drugs
 23 containing ephedrine or pseudoephedrine under a valid
 24 prescription or order of a practitioner (as defined in IC 35-48-1-24)
 25 who acted in the course of the practitioner's professional practice.**

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

28 (h) Not later than three (3) days after the discovery of an unusual
 29 theft at a particular retail store, the pharmacy or NPLeX retailer shall
 30 report the unusual theft to the state police department in writing. If
 31 three (3) unusual thefts occur in a thirty (30) day period at a particular
 32 pharmacy or NPLeX retailer, the pharmacy or NPLeX retailer shall, for
 33 at least one hundred eighty (180) days after the date of the last unusual
 34 theft, locate all drugs containing ephedrine or pseudoephedrine at that
 35 particular pharmacy or NPLeX retailer behind a counter in an area
 36 inaccessible to a customer or in a locked display case that makes the
 37 drug unavailable to customers without the assistance of an employee.

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

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



- 1 section.
- 2 (k) A pharmacy or NPLeX retailer that uses the electronic sales
3 tracking system in accordance with this section is immune from civil
4 liability for any act or omission committed in carrying out the duties
5 required by this section, unless the act or omission was due to
6 negligence, recklessness, or deliberate or wanton misconduct. A
7 pharmacy or NPLeX retailer is immune from liability to a third party
8 unless the pharmacy or NPLeX retailer has violated a provision of this
9 section and the third party brings an action based on the pharmacy's or
10 NPLeX retailer's violation of this section.
- 11 (l) The following requirements apply to the NPLeX:
- 12 (1) Information contained in the NPLeX may be shared only with
13 law enforcement officials.
- 14 (2) A law enforcement official may access Indiana transaction
15 information maintained in the NPLeX for investigative purposes.
- 16 (3) NADDI may not modify sales transaction data that is shared
17 with law enforcement officials.
- 18 (4) At least one (1) time per week, NADDI shall forward Indiana
19 data contained in the NPLeX, including data concerning a
20 transaction that could not be completed due to the issuance of a
21 stop sale alert, to the state police department.

