

HOUSE BILL No. 1495

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-36; IC 16-18-2; IC 16-42-28; IC 34-30-2-83.8.

Synopsis: Prescription drug donation repositories. Establishes the prescription drug donation repository program (program). Establishes a tax credit for a taxpayer who donates medicine under the program during the taxable year. Provides that the amount of the tax credit is equal to the sum of: (1) the cost to the donor of any medicine donated during the taxable year; plus (2) the cost to the donor to make each donation during the taxable year. Allows a person to donate prescription drugs and supplies to a central repository or local repository for use by an individual who is an eligible recipient or qualified individual. Provides that controlled substances are not allowed in the program. Allows a health care facility or pharmacy to elect to participate as a local repository in the program. Establishes criteria for the acceptance and distribution of donated prescription drugs and supplies. Allows an entity that participates in a drug donation program in another state to participate in the program in Indiana. Establishes immunity for certain persons who act reasonably and in good faith under the program. Establishes a tax credit for a person who donates medicine to the program.

Effective: July 1, 2021; January 1, 2022.

Bartels, Davisson

January 14, 2021, read first time and referred to Committee on Public Health.



First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1495

A BILL FOR AN ACT to amend the Indiana Code concerning health.

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

1 SECTION 1. IC 6-3.1-36 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2022]:

4 **Chapter 36. Prescription Drug Donation Repository Program**
5 **Tax Credit**

6 **Sec. 1. As used in this chapter, "pass through entity" has the**
7 **meaning set forth in IC 6-3-1-35.**

8 **Sec. 2. As used in this chapter, "prescription drug donation**
9 **repository program" means the prescription drug donation**
10 **repository program established by IC 16-42-28-9.**

11 **Sec. 3. As used in this chapter, "state tax liability" means the**
12 **taxpayer's total tax liability that is incurred under:**

- 13 (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- 14 (2) IC 27-1-18-2 (the insurance premiums tax) or IC 6-8-15
- 15 (the nonprofit agricultural organization health coverage tax);
- 16 **and**
- 17 (3) IC 6-5.5 (the financial institutions tax);



1 as computed after the application of the tax credits that, under
 2 IC 6-3.1-1-2, are to be applied before the tax credit provided by
 3 this chapter.

4 **Sec. 4.** As used in this chapter, "taxpayer" means an individual
 5 or entity that has any state tax liability.

6 **Sec. 5.** A taxpayer is entitled to a credit against the taxpayer's
 7 state tax liability for a taxable year if the taxpayer makes a
 8 donation of medicine under the prescription drug donation
 9 repository program during the taxable year.

10 **Sec. 6.** The amount of the tax credit to which a taxpayer is
 11 entitled under this chapter is an amount equal to the sum of:

12 (1) the cost to the taxpayer of any medicine (as determined
 13 under 26 U.S.C. 170(e)(3)(A)) donated by the taxpayer under
 14 the prescription drug donation repository program during the
 15 taxable year; plus

16 (2) the verifiable cost to the taxpayer to make each donation
 17 under the prescription drug donation repository program
 18 during the taxable year.

19 **Sec. 7.** To apply a tax credit against the taxpayer's state tax
 20 liability, a taxpayer must claim the tax credit on the taxpayer's
 21 annual state tax return or returns in the manner prescribed by the
 22 department. The taxpayer shall submit to the department the
 23 certification of the taxpayer's donation by the state department of
 24 health and the information that the department determines is
 25 necessary for the department to determine whether the taxpayer
 26 is eligible for the tax credit.

27 **Sec. 8.** If a pass through entity is entitled to a tax credit under
 28 this chapter but does not have state tax liability against which the
 29 tax credit may be applied, a shareholder, partner, or member of
 30 the pass through entity is entitled to a tax credit equal to:

31 (1) the tax credit determined for the pass through entity for
 32 the taxable year; multiplied by

33 (2) the percentage of the pass through entity's distributive
 34 income to which the shareholder, partner, or member is
 35 entitled.

36 **Sec. 9. (a)** If the amount determined under section 6 of this
 37 chapter for a taxable year exceeds the taxpayer's state tax liability
 38 for that taxable year, the taxpayer may carry the excess over to the
 39 immediately following taxable years. The amount of the credit
 40 carryover from a taxable year shall be reduced to the extent that
 41 the carryover is used by the taxpayer to obtain a credit under this
 42 chapter for any subsequent taxable year.



1 (b) A taxpayer is not entitled to a carryback or refund of any
2 unused credit.

3 (c) A taxpayer may not sell, assign, convey, or otherwise
4 transfer the tax credit provided by this chapter.

5 SECTION 2. IC 16-18-2-106.7 IS ADDED TO THE INDIANA
6 CODE AS A NEW SECTION TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2021]: **Sec. 106.7. "Eligible recipient", for**
8 **purposes of IC 16-42-28, has the meaning set forth in**
9 **IC 16-42-28-2.**

10 SECTION 3. IC 16-18-2-161, AS AMENDED BY P.L.113-2015,
11 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2021]: Sec. 161. (a) "Health care facility" includes:

- 13 (1) hospitals licensed under IC 16-21-2, private mental health
14 institutions licensed under IC 12-25, and tuberculosis hospitals
15 established under IC 16-11-1 (before its repeal);
16 (2) health facilities licensed under IC 16-28; and
17 (3) rehabilitation facilities and kidney disease treatment centers.

18 (b) "Health care facility", for purposes of IC 16-21-11 and
19 IC 16-34-3, has the meaning set forth in IC 16-21-11-1.

20 (c) "Health care facility", for purposes of IC 16-28-13, has the
21 meaning set forth in IC 16-28-13-0.5.

22 (d) **"Health care facility", for purposes of IC 16-42-28, has the**
23 **meaning set forth in IC 16-42-28-3.**

24 SECTION 4. IC 16-18-2-281.2 IS ADDED TO THE INDIANA
25 CODE AS A NEW SECTION TO READ AS FOLLOWS
26 [EFFECTIVE JULY 1, 2021]: **Sec. 281.2. "Pharmacy", for purposes**
27 **of IC 16-42-28, has the meaning set forth in IC 16-42-28-4.**

28 SECTION 5. IC 16-18-2-288, AS AMENDED BY P.L.96-2014,
29 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 JULY 1, 2021]: Sec. 288. (a) "Practitioner", for purposes of
31 IC 16-42-19, has the meaning set forth in IC 16-42-19-5.

32 (b) "Practitioner", for purposes of IC 16-41-14, has the meaning set
33 forth in IC 16-41-14-4.

34 (c) "Practitioner", for purposes of IC 16-42-21, has the meaning set
35 forth in IC 16-42-21-3.

36 (d) "Practitioner", for purposes of IC 16-42-22 and IC 16-42-25, has
37 the meaning set forth in IC 16-42-22-4.5.

38 (e) **"Practitioner", for purposes of IC 16-42-28, has the meaning**
39 **set forth in IC 16-42-28-5.**

40 SECTION 6. IC 16-18-2-292.2 IS ADDED TO THE INDIANA
41 CODE AS A NEW SECTION TO READ AS FOLLOWS
42 [EFFECTIVE JULY 1, 2021]: **Sec. 292.2. "Prescription drug", for**



1 **purposes of IC 16-42-28, has the meaning set forth in**
 2 **IC 16-42-28-6.**

3 SECTION 7. IC 16-18-2-294.5, AS AMENDED BY P.L.208-2015,
 4 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2021]: Sec. 294.5. (a) "Program", for purposes of IC 16-40-4,
 6 has the meaning set forth in IC 16-40-4-3.

7 (b) "Program", for purposes of IC 16-41-7.5, has the meaning set
 8 forth in IC 16-41-7.5-2.

9 **(c) "Program", for purposes of IC 16-42-28, has the meaning set**
 10 **forth in IC 16-42-28-7.**

11 ~~(c)~~ (d) "Program", for purposes of IC 16-47-1, has the meaning set
 12 forth in IC 16-47-1-3.

13 SECTION 8. IC 16-18-2-344.5 IS ADDED TO THE INDIANA
 14 CODE AS A NEW SECTION TO READ AS FOLLOWS
 15 [EFFECTIVE JULY 1, 2021]: **Sec. 344.5. "Supplies", for purposes**
 16 **of IC 16-42-28, has the meaning set forth in IC 16-42-28-8.**

17 SECTION 9. IC 16-42-28 IS ADDED TO THE INDIANA CODE
 18 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2021]:

20 **Chapter 28. Prescription Drug Donation Repository Program**

21 **Sec. 1. (a) Nothing in this chapter restricts the use of samples by**
 22 **a physician or other person legally authorized to prescribe drugs**
 23 **under state and federal law during the course of the physician's or**
 24 **other person's duties at a health care facility or pharmacy.**

25 **(b) Nothing in this chapter authorizes the resale of prescription**
 26 **drugs by any person.**

27 **(c) Nothing in this chapter requires a:**

28 **(1) central repository;**

29 **(2) local repository; or**

30 **(3) person who donates, transfers, or receives medicine under**
 31 **this chapter;**

32 **to have a license as a wholesale distributor.**

33 **Sec. 2. As used in this chapter, "eligible recipient" means an**
 34 **individual:**

35 **(1) with an income that is below two hundred percent (200%)**
 36 **of the federal poverty level, as defined by the most recently**
 37 **revised poverty income guidelines published by the federal**
 38 **Department of Health and Human Services; and**

39 **(2) who is not eligible for pharmaceutical coverage through a**
 40 **government program or private health insurance.**

41 **Sec. 3. As used in this chapter, "health care facility" means any**
 42 **of the following:**



- 1 (1) A physician's office.
 2 (2) A hospital.
 3 (3) A health clinic, including the following:
 4 (A) A federally-qualified health center as defined in 42
 5 U.S.C. 1396d(l)(2)(B).
 6 (B) A rural health clinic described in section 42 U.S.C.
 7 1396d(l)(1).
 8 (4) A nonprofit health clinic that provides medical care to
 9 patients who are indigent, uninsured, underinsured, or unable
 10 to pay for the services.
 11 (5) A charitable organization that is exempt from taxation
 12 under Section 501(c)(3) of the Internal Revenue Code that has
 13 as its primary purpose the sponsorship or support of
 14 programs designed to improve the quality, awareness, and
 15 availability of medical services to individuals.
 16 (6) A health facility.
- 17 Sec. 4. As used in this chapter, "pharmacy" has the meaning set
 18 forth in IC 25-26-13-2.
- 19 Sec. 5. As used in this chapter, "practitioner" means any of the
 20 following:
 21 (1) A physician licensed under IC 25-22.5.
 22 (2) A dentist licensed to practice dentistry under IC 25-14.
 23 (3) A podiatrist licensed to practice podiatric medicine under
 24 IC 25-29.
 25 (4) An optometrist who is:
 26 (A) licensed to practice optometry in Indiana; and
 27 (B) certified under IC 25-24-3.
 28 (5) An advanced practice registered nurse who meets the
 29 requirements of IC 25-23-1-19.5.
 30 (6) A physician assistant licensed under IC 25-27.5 who is
 31 delegated prescriptive authority under IC 25-27.5-5-6.
- 32 Sec. 6. As used in this chapter, "prescription drug" means a
 33 drug, as classified by the federal Food and Drug Administration,
 34 that is required by the federal Food and Drug Administration to be
 35 prescribed or administered to a patient by a practitioner before
 36 dispensation, including the following:
 37 (1) A drug that suppresses the immune system to prevent or
 38 reverse rejection of a transplanted organ.
 39 (2) A drug that is used to treat cancer or the side effects of
 40 cancer.
 41 (3) A drug that is used to treat the side effects of any
 42 prescription drug that is used to treat cancer or the side



1 effects of cancer.

2 The term does not include controlled substances (as defined in
3 IC 35-48-1-9).

4 Sec. 7. As used in this chapter, "program" refers to the
5 prescription drug donation repository program established by
6 section 9 of this chapter.

7 Sec. 8. As used in this chapter, "supplies" means the supplies
8 necessary to administer the donated prescription drugs.

9 Sec. 9. (a) The prescription drug donation repository program
10 is established. The program allows a person to donate prescription
11 drugs and supplies to a central repository or local repository for
12 use by an individual who is an eligible recipient. However, the
13 program may permit prescription drugs and supplies to be
14 dispensed to other qualified individuals if an uninsured or indigent
15 individual is unavailable.

16 (b) The state department, in cooperation with the Indiana board
17 of pharmacy (IC 25-26-13-3), shall administer and maintain the
18 program.

19 (c) The state department may establish a central depository that
20 accepts donated prescription drugs and supplies, conducts a safety
21 inspection of the prescription drugs, and ships donated
22 prescription drugs and supplies to a local repository.

23 (d) The state department may contract with a third party to
24 implement and administer the program.

25 Sec. 10. (a) A health care facility or pharmacy may elect to
26 participate as a local repository in the program.

27 (b) Donations of prescription drugs and supplies under the
28 program may be made on the premises of the central repository or
29 a local repository.

30 (c) A local repository must meet the following requirements:

31 (1) Comply with all laws applicable to the storage and
32 distribution of prescription drugs.

33 (2) Provide to the state department the name, street address,
34 and telephone number of the pharmacy or health care facility,
35 and any state license or registration number issued to the
36 pharmacy or health care facility, including the name of the
37 issuing agency or board.

38 (3) The name and telephone number of the responsible
39 practitioner who is employed by or under contract with the
40 pharmacy or health care facility.

41 (4) A statement, signed and dated by the responsible
42 practitioner, indicating that the pharmacy or health care



1 facility meets the eligibility requirements under this chapter.

2 **Sec. 11. A local repository may withdraw from participation in**
3 **the program at any time by providing written notice to the**
4 **department.**

5 **Sec. 12. Any individual who is at least eighteen (18) years of age**
6 **may donate legally obtained prescription drugs or supplies to the**
7 **central repository or a local repository. A practitioner who is**
8 **employed by or under contract with the central repository or local**
9 **repository shall determine that the prescription drugs or supplies**
10 **meet the requirements of this chapter.**

11 **Sec. 13. (a) Except for prescription drugs donated directly from**
12 **a drug manufacturer, a prescription drug that requires storage**
13 **temperatures other than normal room temperature as specified by**
14 **the manufacturer or the United States Pharmacopoeia, or its**
15 **supplements, may not be donated or accepted as part of the**
16 **program.**

17 **(b) The central repository or a local repository may accept and**
18 **dispense a prescription drug if the following requirements are met:**

19 **(1) The drug is in its original sealed and tamper evident**
20 **packaging. However, a prescription drug in a single unit dose**
21 **or blister pack with the outside packaging opened may be**
22 **accepted if the single unit dose packaging is undisturbed.**

23 **(2) The drug has been stored according to manufacturer or**
24 **United States Pharmacopoeia, or its supplements, storage**
25 **requirements, unless a United States Pharmacopoeia**
26 **recognized method to detect improper temperature variations**
27 **has been used.**

28 **(3) The packaging contains the expiration date of the drug.**

29 **(4) The drug has an expiration date that is more than six (6)**
30 **months after the date that the drug was donated. However, a**
31 **prescription drug bearing an expiration date that is six (6)**
32 **months or less after the date the drug was donated may be**
33 **accepted and distributed if the drug is in high demand and**
34 **can be dispensed for use before the drug's expiration date.**

35 **(5) The drug or its packaging does not have any physical signs**
36 **of tampering, misbranding, deterioration, compromised**
37 **integrity, or adulteration.**

38 **(c) The donated prescription drugs and supplies must be**
39 **inventoried at the central repository or a local repository. If the**
40 **drug:**

41 **(1) has been continually under the control of a practitioner or**
42 **drug manufacturer, the inventory must include the name of**



- 1 the drug, strength of the drug, quantity of the drug, and the
2 date of donation; or
- 3 (2) has not been continually under the control of a
4 practitioner or drug manufacturer, the repository shall collect
5 a donation form that is signed by the person making the
6 donation or the person's authorized representative.
- 7 (d) The central repository or a local repository shall maintain
8 records of the prescription drugs and supplies that are donated,
9 accepted, distributed, and dispensed under the program.
- 10 (e) The central repository or a local repository may repackage
11 donated medicine as necessary for storage, dispensing,
12 administration, or transfers if the repackaged medicine is:
- 13 (1) labeled with the drug name, strength, and expiration date;
14 and
- 15 (2) kept in a separate designated area until inspected and
16 initialed by a health care professional.
- 17 If multiple packaged donated medicines with varied expiration
18 dates are repackaged together, the shortest expiration date shall be
19 used. A manufacturer's original expiration date may be used in
20 place of a beyond use date.
- 21 (f) Donated medicine that does not meet the requirements of this
22 section must be disposed of by:
- 23 (1) returning it to the drug donor;
24 (2) destroying it by an incinerator, medical waste hauler, or
25 other lawful method; or
- 26 (3) transferring it to a returns processor.
- 27 (g) A record of disposed medicine under subsection (f) must
28 contain the following information:
- 29 (1) The disposal method that was used.
30 (2) The date of disposal.
31 (3) The name, strength, and quantity of each drug disposed.
- 32 Any other information concerning the disposal of the medicine is
33 not required.
- 34 Sec. 14. The central repository or a local repository may charge
35 an individual who receives a prescription drug or supplies a
36 handling fee that may not exceed the repository's cost of providing
37 that drug including the following:
- 38 (1) The current and anticipated costs of educating eligible
39 donors.
40 (2) Providing technical support to participating donors.
41 (3) Shipping and handling, labor, storage, licensing, utilities,
42 advertising, technology, supplies, and equipment.



1 **Sec. 15. (a)** The central repository or a local repository that
2 receives prescription drugs or supplies may transfer the
3 prescription drugs or supplies to the central repository or a local
4 repository for use in the program.

5 **(b)** The state department may receive prescription drugs or
6 supplies directly from a prescription drug donation repository
7 contractor and may distribute the prescription drugs and supplies
8 through practitioners licensed to dispense prescription drugs and
9 supplies to an eligible recipient or qualified individual.

10 **(c)** The state department may receive and distribute the
11 prescription drugs or supplies under this section during or in
12 preparation for a state of disaster emergency proclaimed by the
13 governor or during or in preparation for a public health
14 emergency.

15 **Sec. 16.** The prescription drugs or supplies that are prescribed
16 by a practitioner for use by an eligible recipient or other qualified
17 individual must be dispensed by:

18 **(1)** a pharmacist; or

19 **(2)** the prescribing practitioner or the practitioner's
20 authorized agent.

21 **Sec. 17.** An individual may receive prescription drugs or
22 supplies under the program if the following conditions are met:

23 **(1)** The prescription drugs or supplies are prescribed for the
24 individual by a practitioner.

25 **(2)** The:

26 **(A)** individual attests that the individual is an eligible
27 recipient; or

28 **(B)** prescribing practitioner attests that an uninsured or
29 indigent individual is unavailable.

30 **Sec. 18. (a)** A prescription drug or supplies donated under this
31 chapter may not be resold.

32 **(b)** A prescription drug dispensed through the program is not
33 eligible for reimbursement under a medical assistance program.

34 **Sec. 19. (a)** If a person who donates prescription drugs under
35 this chapter to the central repository or a local repository receives
36 a notice from a pharmacy that a prescription drug has been
37 recalled, the person shall inform the central repository or a local
38 repository of the recall.

39 **(b)** If the central repository or a local repository receives a
40 recall notification from a person who donated prescription drugs
41 under this chapter, the central repository or a local repository shall
42 perform a uniform destruction of all of the recalled prescription



1 drugs in the central repository or local repository. However, a
 2 prescription drug may be retained if the drug has an affixed lot
 3 number to exclude it from the recall.

4 **Sec. 20. (a)** An entity that participates in a drug donation or
 5 repository program in another state may participate in the
 6 program.

7 (b) If the entity under subsection (a) is a pharmacy that is
 8 licensed in another state, the pharmacy may dispense donated
 9 prescription drugs and supplies to residents of Indiana.

10 (c) A central repository or a local repository may donate or
 11 transfer drugs and supplies to an out of state entity that
 12 participates in a drug donation or repository program in another
 13 state.

14 (d) Notwithstanding any other law, an out of state entity that
 15 participates in the program is required to comply with the laws
 16 and rules of Indiana, unless the law or rule is in conflict with a law
 17 or rule in the state where the entity is located.

18 **Sec. 21. (a)** A drug manufacturer acting reasonably and in good
 19 faith is not subject to criminal prosecution or civil liability for
 20 injury, death, or loss to a person or property for matters related to
 21 the donation, acceptance, or dispensing of a prescription drug
 22 manufactured by the drug manufacturer that is donated under this
 23 chapter, including liability for failure to transfer or communicate
 24 product or consumer information or the expiration date of the
 25 donated prescription drug.

26 (b) Except as provided in subsections (a) and (c), a person,
 27 including the state department or the department's employees,
 28 agents, or volunteers, acting reasonably and in good faith, is:

29 (1) immune from civil liability and criminal prosecution for
 30 injury to or the death of an individual to whom a donated
 31 prescription drug is dispensed under this chapter; and

32 (2) exempt from disciplinary action related to the person's
 33 acts or omissions related to the donation, acceptance,
 34 distribution, or dispensing of a donated prescription drug
 35 under this chapter.

36 (c) The immunity and exemption provided in subsection (b) do
 37 not extend to the following:

38 (1) The donation, acceptance, distribution, or dispensing of a
 39 donated prescription drug under this chapter by a person if
 40 the person's acts or omissions are not performed reasonably
 41 and in good faith.

42 (2) Acts or omissions outside the scope of the program.



1 **Sec. 22. The department may adopt rules under IC 4-22-2 to**
2 **administer the program.**
3 SECTION 10. IC 34-30-2-83.8 IS ADDED TO THE INDIANA
4 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2021]: **Sec. 83.8. IC 16-42-28-21 (Concerning**
6 **drug manufacturers and a person acting reasonably and in good**
7 **faith).**
8 SECTION 11. [EFFECTIVE JULY 1, 2021] **(a) IC 6-3.1-36, as**
9 **added by this act, applies to taxable years beginning after**
10 **December 31, 2021.**
11 **(b) This SECTION expires June 30, 2023.**

