



Reprinted
January 23, 2008

SENATE BILL No. 3

DIGEST OF SB 3 (Updated January 22, 2008 3:12 pm - DI 104)

Citations Affected: IC 16-34; IC 25-26; IC 34-30.

Synopsis: Dispensing of drugs by pharmacists. Provides that a pharmacist may not be required to dispense or sell a drug or medical device if the drug or medical device would be used to: (1) cause an abortion; or (2) cause the death of a person by means of assisted suicide, euthanasia, or mercy killing. Specifies certain actions that a pharmacist must take when refusing to dispense a drug or medical device. States that a pharmacy must have a policy in place to dispense or sell a drug or medical device that a pharmacist refuses to dispense or sell. Specifies that a pharmacist's refusal to dispense or sell a drug or medical device may not be the basis for: (1) a claim of damages against the pharmacist or pharmacy; and (2) disciplinary action against the pharmacist. Provides that an employer who knowingly or intentionally takes disciplinary, recriminatory, or discriminatory action against a pharmacist who refuses to dispense or sell a drug or medical device commits pharmacy discrimination, a Class A misdemeanor. Makes a second or subsequent offense a Class D felony. Authorizes the Indiana board of pharmacy to assess additional fines against the employer.

Effective: July 1, 2008.

Drozda, Delph, Kruse

January 8, 2008, read first time and referred to Committee on Health and Provider Services.

January 10, 2008, amended, reported favorably — Do Pass.

January 22, 2008, read second time, amended, ordered engrossed.

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SB 3—LS 6061/DI 104+



Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

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SENATE BILL No. 3

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 16-34-1-5.5 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2008]: **Sec. 5.5. (a) No pharmacist may be required to dispense
4 or sell a drug or medical device if the pharmacist believes that the
5 drug or medical device would be used to:**
6 (1) cause an abortion; or
7 (2) cause the death of a person by means of assisting suicide
8 (IC 35-42-1-2.5), euthanasia, or mercy killing.
9 However, before a pharmacist refuses to dispense a drug or
10 medical device under subdivision (2), the pharmacist shall contact
11 the prescribing physician to clarify the clinical condition of the
12 patient and the appropriateness of the prescribed drug or medical
13 device.
14 (b) If a pharmacist refuses to dispense or sell a drug or medical
15 device under subsection (a)(1), the pharmacy where the pharmacist
16 is employed shall have a policy in place to dispense or sell the drug
17 or medical device.



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(c) A pharmacist's refusal under this section to dispense or sell a drug or medical device may not be the basis for:

- (1) a claim for damages against the pharmacist or the pharmacy where the pharmacist is employed; or
- (2) disciplinary, recriminatory, or discriminatory action against the pharmacist by the employer.

(d) An employer who knowingly or intentionally takes disciplinary, recriminatory, or discriminatory action against a pharmacist employed by the employer because the pharmacist refused to dispense or sell a drug or medical device under subsection (a) commits pharmacy discrimination, a Class A misdemeanor. However, the offense is a Class D felony if the employer has a prior unrelated conviction for a violation of this subsection.

(e) If an employer is convicted of pharmacy discrimination under subsection (d), the Indiana board of pharmacy may assess against the employer a fine of not more than five thousand dollars (\$5,000) for a first offense and a fine of not more than ten thousand dollars (\$10,000) for a second or subsequent offense. A fine assessed under this subsection is in addition to any fine or other penalty imposed under subsection (d).

SECTION 2. IC 25-26-13-4, AS AMENDED BY P.L.204-2005, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) The board may:

- (1) promulgate rules and regulations under IC 4-22-2 for implementing and enforcing this chapter;
- (2) establish requirements and tests to determine the moral, physical, intellectual, educational, scientific, technical, and professional qualifications for applicants for pharmacists' licenses;
- (3) refuse to issue, deny, suspend, or revoke a license or permit or place on probation or fine any licensee or permittee under this chapter **or fine an employer under IC 16-34-1-5.5;**
- (4) regulate the sale of drugs and devices in the state of Indiana;
- (5) impound, embargo, confiscate, or otherwise prevent from disposition any drugs, medicines, chemicals, poisons, or devices which by inspection are deemed unfit for use or would be dangerous to the health and welfare of the citizens of the state of Indiana; the board shall follow those embargo procedures found in IC 16-42-1-18 through IC 16-42-1-31, and persons may not refuse to permit or otherwise prevent members of the board or their representatives from entering such places and making such

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1 inspections;

2 (6) prescribe minimum standards with respect to physical

3 characteristics of pharmacies, as may be necessary to the

4 maintenance of professional surroundings and to the protection of

5 the safety and welfare of the public;

6 (7) subject to IC 25-1-7, investigate complaints, subpoena

7 witnesses, schedule and conduct hearings on behalf of the public

8 interest on any matter under the jurisdiction of the board;

9 (8) prescribe the time, place, method, manner, scope, and subjects

10 of licensing examinations, which shall be given at least twice

11 annually; and

12 (9) perform such other duties and functions and exercise such

13 other powers as may be necessary to implement and enforce this

14 chapter.

15 (b) The board shall adopt rules under IC 4-22-2 for the following:

16 (1) Establishing standards for the competent practice of

17 pharmacy.

18 (2) Establishing the standards for a pharmacist to counsel

19 individuals regarding the proper use of drugs.

20 (3) Establishing standards and procedures before January 1, 2006,

21 to ensure that a pharmacist:

22 (A) has entered into a contract that accepts the return of

23 expired drugs with; or

24 (B) is subject to a policy that accepts the return of expired

25 drugs of;

26 a wholesaler, manufacturer, or agent of a wholesaler or

27 manufacturer concerning the return by the pharmacist to the

28 wholesaler, the manufacturer, or the agent of expired legend drugs

29 or controlled drugs. In determining the standards and procedures,

30 the board may not interfere with negotiated terms related to cost,

31 expenses, or reimbursement charges contained in contracts

32 between parties, but may consider what is a reasonable quantity

33 of a drug to be purchased by a pharmacy. The standards and

34 procedures do not apply to vaccines that prevent influenza,

35 medicine used for the treatment of malignant hyperthermia, and

36 other drugs determined by the board to not be subject to a return

37 policy. An agent of a wholesaler or manufacturer must be

38 appointed in writing and have policies, personnel, and facilities

39 to handle properly returns of expired legend drugs and controlled

40 substances.

41 (c) The board may grant or deny a temporary variance to a rule it

42 has adopted if:

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1 (1) the board has adopted rules which set forth the procedures and
 2 standards governing the grant or denial of a temporary variance;
 3 and
 4 (2) the board sets forth in writing the reasons for a grant or denial
 5 of a temporary variance.
 6 (d) The board shall adopt rules and procedures, in consultation with
 7 the medical licensing board, concerning the electronic transmission of
 8 prescriptions. The rules adopted under this subsection must address the
 9 following:
 10 (1) Privacy protection for the practitioner and the practitioner's
 11 patient.
 12 (2) Security of the electronic transmission.
 13 (3) A process for approving electronic data intermediaries for the
 14 electronic transmission of prescriptions.
 15 (4) Use of a practitioner's United States Drug Enforcement
 16 Agency registration number.
 17 (5) Protection of the practitioner from identity theft or fraudulent
 18 use of the practitioner's prescribing authority.
 19 SECTION 3. IC 34-30-2-70.5 IS ADDED TO THE INDIANA
 20 CODE AS A NEW SECTION TO READ AS FOLLOWS
 21 [EFFECTIVE JULY 1, 2008]: **Sec. 70.5. IC 16-34-1-5.5 (Concerning**
 22 **a pharmacist or pharmacy that refuses to dispense or sell certain**
 23 **drugs or medical devices).**

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COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 3, 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, line 15, delete "pharmacist." and insert "**pharmacist by the employer.**".

and when so amended that said bill do pass.

(Reference is to SB 3 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 6, Nays 5.

SENATE MOTION

Madam President: I move that Senators Delph and Kruse be added as coauthors of Senate Bill 3.

DROZDA

SENATE MOTION

Madam President: I move that Senate Bill 3 be amended to read as follows:

Page 1, line 3, after "dispense" insert "**or sell**".

Page 1, line 6, after "abortion;" insert "**or**".

Page 1, delete line 7.

Page 1, line 8, delete "(3)" and insert "**(2)**".

Page 1, between lines 9 and 10, begin a new line blocked left and insert:

"However, before a pharmacist refuses to dispense a drug or medical device under subdivision (2), the pharmacist shall contact the prescribing physician to clarify the clinical condition of the patient and the appropriateness of the prescribed drug or medical device."

Page 1, line 10, after "(b)" insert "**If a pharmacist refuses to dispense or sell a drug or medical device under subsection (a)(1),**



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the pharmacy where the pharmacist is employed shall have a policy in place to dispense or sell the drug or medical device.

(c)".

Page 1, line 10, after "dispense" insert "**or sell**".

Page 1, line 16, delete "(c)" and insert "**(d)**".

Page 2, line 2, after "dispense" insert "**or sell**".

Page 2, line 6, delete "(d)" and insert "**(e)**".

Page 2, line 7, delete "(c)," and insert "**(d),**".

Page 2, line 12, delete "(c)." and insert "**(d).**".

Page 4, line 13, after "dispense" insert "**or sell**".

(Reference is to SB 3 as printed January 11, 2008.)

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