

SENATE BILL No. 225

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5-8-7; IC 35-48.

Synopsis: Controlled substances in a penal or juvenile facility. Increases the penalty for committing a controlled substance offense on the property of a penal facility or a juvenile facility.

Effective: July 1, 2019.

Crider

January 3, 2019, read first time and referred to Committee on Corrections and Criminal Law.



First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

SENATE BILL No. 225

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 6-2.5-8-7, AS AMENDED BY P.L.153-2018,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: Sec. 7. (a) The department may, for good cause, revoke
4 a certificate issued under section 1, 3, or 4 of this chapter. However,
5 the department must give the certificate holder at least five (5) days
6 notice before it revokes the certificate under this subsection. Good
7 cause for revocation may include the following:
8 (1) Failure to:
9 (A) file a return required under this chapter or for any tax
10 collected for the state in trust; or
11 (B) remit any tax collected for the state in trust.
12 (2) Being charged with a violation of any provision under IC 35.
13 (3) Being subject to a court order under IC 7.1-2-6-7,
14 IC 32-30-6-8, IC 32-30-7, or IC 32-30-8.
15 (4) Being charged with a violation of IC 23-15-12.
16 The department may revoke a certificate before a criminal adjudication
17 or without a criminal charge being filed. If the department gives notice



1 of an intent to revoke based on an alleged violation of subdivision (2),
2 the department shall hold a public hearing to determine whether good
3 cause exists. If the department finds in a public hearing by a
4 preponderance of the evidence that a person has committed a violation
5 described in subdivision (2), the department shall proceed in
6 accordance with subsection (i) (if the violation resulted in a criminal
7 conviction) or subsection (j) (if the violation resulted in a judgment for
8 an infraction).

9 (b) The department shall revoke a certificate issued under section
10 1, 3, or 4 of this chapter if, for a period of three (3) years, the certificate
11 holder fails to:

- 12 (1) file the returns required by IC 6-2.5-6-1; or
- 13 (2) report the collection of any state gross retail or use tax on the
14 returns filed under IC 6-2.5-6-1.

15 However, the department must give the certificate holder at least five
16 (5) days notice before it revokes the certificate.

17 (c) The department may, for good cause, revoke a certificate issued
18 under section 1 of this chapter after at least five (5) days notice to the
19 certificate holder if:

- 20 (1) the certificate holder is subject to an innkeeper's tax under
21 IC 6-9; and
- 22 (2) a board, bureau, or commission established under IC 6-9 files
23 a written statement with the department.

24 (d) The statement filed under subsection (c) must state that:

- 25 (1) information obtained by the board, bureau, or commission
26 under IC 6-8.1-7-1 indicates that the certificate holder has not
27 complied with IC 6-9; and
- 28 (2) the board, bureau, or commission has determined that
29 significant harm will result to the county from the certificate
30 holder's failure to comply with IC 6-9.

31 (e) The department shall revoke or suspend a certificate issued
32 under section 1 of this chapter after at least five (5) days notice to the
33 certificate holder if:

- 34 (1) the certificate holder owes taxes, penalties, fines, interest, or
35 costs due under IC 6-1.1 that remain unpaid at least sixty (60)
36 days after the due date under IC 6-1.1; and
- 37 (2) the treasurer of the county to which the taxes are due requests
38 the department to revoke or suspend the certificate.

39 (f) The department shall reinstate a certificate suspended under
40 subsection (e) if the taxes and any penalties due under IC 6-1.1 are paid
41 or the county treasurer requests the department to reinstate the
42 certificate because an agreement for the payment of taxes and any



1 penalties due under IC 6-1.1 has been reached to the satisfaction of the
2 county treasurer.

3 (g) The department shall revoke a certificate issued under section
4 1 of this chapter after at least five (5) days notice to the certificate
5 holder if the department finds in a public hearing by a preponderance
6 of the evidence that the certificate holder has violated IC 35-45-5-3,
7 IC 35-45-5-3.5, or IC 35-45-5-4.

8 (h) If a person makes a payment for the certificate under section 1
9 or 3 of this chapter with a check, credit card, debit card, or electronic
10 funds transfer, and the department is unable to obtain payment of the
11 check, credit card, debit card, or electronic funds transfer for its full
12 face amount when the check, credit card, debit card, or electronic funds
13 transfer is presented for payment through normal banking channels, the
14 department shall notify the person by mail that the check, credit card,
15 debit card, or electronic funds transfer was not honored and that the
16 person has five (5) days after the notice is mailed to pay the fee in cash,
17 by certified check, or other guaranteed payment. If the person fails to
18 make the payment within the five (5) day period, the department shall
19 revoke the certificate.

20 (i) If the department finds in a public hearing by a preponderance of
21 the evidence that a person has a conviction for a violation of
22 IC 35-48-4-10.5 and the conviction involved the sale of or the offer to
23 sell, in the normal course of business, a synthetic drug or a synthetic
24 drug lookalike substance by a retail merchant in a place of business for
25 which the retail merchant has been issued a registered retail merchant
26 certificate under section 1 of this chapter, the department:

27 (1) shall suspend the registered retail merchant certificate for the
28 place of business for one (1) year; and

29 (2) may not issue another retail merchant certificate under section
30 1 of this chapter for one (1) year to any person:

31 (A) that:

32 (i) applied for; or

33 (ii) made a retail transaction under;

34 the retail merchant certificate suspended under subdivision
35 (1); or

36 (B) that:

37 (i) owned or co-owned, directly or indirectly; or

38 (ii) was an officer, a director, a manager, or a partner of;

39 the retail merchant that was issued the retail merchant
40 certificate suspended under subdivision (1).

41 (j) If the department finds in a public hearing by a preponderance of
42 the evidence that a person has a judgment for a violation of



1 IC 35-48-4-10.5 as an infraction and the violation involved the sale of
 2 or the offer to sell, in the normal course of business, a synthetic drug
 3 or a synthetic drug lookalike substance by a retail merchant in a place
 4 of business for which the retail merchant has been issued a registered
 5 retail merchant certificate under section 1 of this chapter, the
 6 department:

7 (1) may suspend the registered retail merchant certificate for the
 8 place of business for six (6) months; and

9 (2) may withhold issuance of another retail merchant certificate
 10 under section 1 of this chapter for six (6) months to any person:

11 (A) that:

12 (i) applied for; or

13 (ii) made a retail transaction under;

14 the retail merchant certificate suspended under subdivision
 15 (1); or

16 (B) that:

17 (i) owned or co-owned, directly or indirectly; or

18 (ii) was an officer, a director, a manager, or a partner of;

19 the retail merchant that was issued the retail merchant
 20 certificate suspended under subdivision (1).

21 (k) If the department finds in a public hearing by a preponderance
 22 of the evidence that a person has a conviction for a violation of
 23 ~~IC 35-48-4-10(d)(3)~~ **IC 35-48-4-10(d)(4)** and the conviction involved
 24 an offense committed by a retail merchant in a place of business for
 25 which the retail merchant has been issued a registered retail merchant
 26 certificate under section 1 of this chapter, the department:

27 (1) shall suspend the registered retail merchant certificate for the
 28 place of business for one (1) year; and

29 (2) may not issue another retail merchant certificate under section
 30 1 of this chapter for one (1) year to any person:

31 (A) that:

32 (i) applied for; or

33 (ii) made a retail transaction under;

34 the retail merchant certificate suspended under subdivision
 35 (1); or

36 (B) that:

37 (i) owned or co-owned, directly or indirectly; or

38 (ii) was an officer, a director, a manager, or a partner of;

39 the retail merchant that was issued the retail merchant
 40 certificate suspended under subdivision (1).

41 SECTION 2. IC 35-48-1-16.5, AS AMENDED BY P.L.168-2014,
 42 SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2019]: Sec. 16.5. "Enhancing circumstance" means one (1) or
2 more of the following:

3 (1) The person has a prior conviction, in any jurisdiction, for
4 dealing in a controlled substance that is not marijuana, hashish,
5 hash oil, salvia divinorum, or a synthetic drug, including an
6 attempt or conspiracy to commit the offense.

7 (2) The person committed the offense while in possession of a
8 firearm.

9 (3) The person committed the offense:

10 (A) on a school bus; or

11 (B) in, on, or within five hundred (500) feet of:

12 (i) school property while a person under eighteen (18) years
13 of age was reasonably expected to be present; or

14 (ii) a public park while a person under eighteen (18) years
15 of age was reasonably expected to be present.

16 (4) The person delivered or financed the delivery of the drug to a
17 person under eighteen (18) years of age at least three (3) years
18 junior to the person.

19 (5) The person manufactured or financed the manufacture of the
20 drug.

21 (6) The person committed the offense in the physical presence of
22 a child less than eighteen (18) years of age, knowing that the child
23 was present and might be able to see or hear the offense.

24 **(7) The person committed the offense on the property of a:**

25 **(A) penal facility; or**

26 **(B) juvenile facility (as defined in IC 35-44.1-3-5).**

27 SECTION 3. IC 35-48-4-10, AS AMENDED BY P.L.153-2018,
28 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
29 JULY 1, 2019]: Sec. 10. (a) A person who:

30 (1) knowingly or intentionally:

31 (A) manufactures;

32 (B) finances the manufacture of;

33 (C) delivers; or

34 (D) finances the delivery of;

35 marijuana, hash oil, hashish, or salvia, pure or adulterated; or

36 (2) possesses, with intent to:

37 (A) manufacture;

38 (B) finance the manufacture of;

39 (C) deliver; or

40 (D) finance the delivery of;

41 marijuana, hash oil, hashish, or salvia, pure or adulterated;

42 commits dealing in marijuana, hash oil, hashish, or salvia, a Class A



- 1 misdemeanor, except as provided in subsections (b) through (d).
 2 (b) A person may be convicted of an offense under subsection (a)(2)
 3 only if:
 4 (1) there is evidence in addition to the weight of the drug that the
 5 person intended to manufacture, finance the manufacture of,
 6 deliver, or finance the delivery of the drug; or
 7 (2) the amount of the drug involved is at least:
 8 (A) ten (10) pounds, if the drug is marijuana; or
 9 (B) three hundred (300) grams, if the drug is hash oil, hashish,
 10 or salvia.
 11 (c) The offense is a Level 6 felony if:
 12 (1) the person has a prior conviction for a drug offense and the
 13 amount of the drug involved is:
 14 (A) less than thirty (30) grams of marijuana; or
 15 (B) less than five (5) grams of hash oil, hashish, or salvia;
 16 **(2) the person commits the offense on the property of a penal**
 17 **facility or a juvenile facility (as defined in IC 35-44.1-3-5) and**
 18 **the amount of the drug involved is:**
 19 **(A) less than thirty (30) grams of marijuana; or**
 20 **(B) less than five (5) grams of hash oil, hashish, or salvia;**
 21 or
 22 ~~(2)~~ **(3) the amount of the drug involved is:**
 23 **(A) at least thirty (30) grams but less than ten (10) pounds of**
 24 **marijuana; or**
 25 **(B) at least five (5) grams but less than three hundred (300)**
 26 **grams of hash oil, hashish, or salvia.**
 27 (d) The offense is a Level 5 felony if:
 28 (1) the person has a prior conviction for a drug dealing offense
 29 and the amount of the drug involved is:
 30 (A) at least thirty (30) grams but less than ten (10) pounds of
 31 marijuana; or
 32 (B) at least five (5) grams but less than three hundred (300)
 33 grams of hash oil, hashish, or salvia;
 34 **(2) the person commits the offense on the property of a penal**
 35 **facility or a juvenile facility (as defined in IC 35-44.1-3-5) and**
 36 **the amount of the drug involved is:**
 37 **(A) at least thirty (30) grams but less than ten (10) pounds**
 38 **of marijuana; or**
 39 **(B) at least five (5) grams but less than three hundred (300)**
 40 **grams of hash oil, hashish, or salvia;**
 41 ~~(2)~~ **(3) the:**
 42 **(A) amount of the drug involved is:**



- 1 (i) at least ten (10) pounds of marijuana; or
 2 (ii) at least three hundred (300) grams of hash oil, hashish,
 3 or salvia; or
 4 (B) offense involved a sale to a minor; or
 5 ~~(3)~~ (4) the:
 6 (A) person is a retailer;
 7 (B) marijuana, hash oil, hashish, or salvia is packaged in a
 8 manner that appears to be low THC hemp extract; and
 9 (C) person knew or reasonably should have known that the
 10 product was marijuana, hash oil, hashish, or salvia.
 11 SECTION 4. IC 35-48-4-10.5, AS AMENDED BY P.L.168-2014,
 12 SECTION 101, IS AMENDED TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2019]: Sec. 10.5. (a) A person who:
 14 (1) manufactures;
 15 (2) finances the manufacture of;
 16 (3) delivers;
 17 (4) finances the delivery of;
 18 (5) possesses, with intent to deliver; or
 19 (6) possesses, with intent to finance the delivery of;
 20 a synthetic drug or a synthetic drug lookalike substance commits
 21 dealing in a synthetic drug or synthetic drug lookalike substance, a
 22 Class A infraction. However, the offense is a Level 6 felony if the
 23 offense is committed knowingly or intentionally and the person has a
 24 prior unrelated judgment or conviction under this subsection, **or if the**
 25 **person knowingly or intentionally commits the offense on the**
 26 **property of a penal facility or a juvenile facility (as defined in**
 27 **IC 35-44.1-3-5).**
 28 (b) A person may be adjudicated or convicted of an infraction or
 29 offense under subsection (a)(5) or (a)(6) only if there is evidence in
 30 addition to the weight of the synthetic drug or synthetic drug lookalike
 31 substance that the person intended to deliver or finance the delivery of
 32 the synthetic drug or synthetic drug lookalike substance.
 33 (c) A person who:
 34 (1) knowingly or intentionally:
 35 (A) manufactures;
 36 (B) finances the manufacture of;
 37 (C) delivers; or
 38 (D) finances the delivery of;
 39 a synthetic drug or synthetic drug lookalike substance; or
 40 (2) possesses, with intent to:
 41 (A) manufacture;
 42 (B) finance the manufacture of;



- 1 (C) deliver; or
 2 (D) finance the delivery of;
 3 a synthetic drug or synthetic drug lookalike substance;
 4 commits dealing in a synthetic drug or synthetic drug lookalike
 5 substance, a Class A misdemeanor, except as provided in subsections
 6 (d) through (e).
- 7 (d) A person may be convicted of an offense under subsection (c)(2)
 8 only if there is evidence in addition to the weight of the synthetic drug
 9 or synthetic drug lookalike substance that the person intended to
 10 manufacture, finance the manufacture of, deliver, or finance the
 11 delivery of the synthetic drug or synthetic drug lookalike substance.
- 12 (e) The offense in subsection (c) is:
- 13 (1) a Level 6 felony if:
- 14 (A) the recipient or intended recipient is less than eighteen
 15 (18) years of age;
 16 (B) the amount involved is more than five (5) grams;
 17 **(C) the offense is committed on the property of a penal**
 18 **facility or a juvenile facility (as defined in IC 35-44.1-3-5);**
 19 or
 20 ~~(D)~~ **(D)** the person has a prior conviction of an offense
 21 involving a synthetic drug or synthetic drug lookalike
 22 substance; and
- 23 (2) a Level 5 felony if the amount involved is more than five (5)
 24 grams and the person delivered or financed the delivery of the
 25 synthetic drug or synthetic drug lookalike substance:
- 26 (A) on a school bus; or
 27 (B) in, on, or within five hundred (500) feet of:
 28 (i) school property; or
 29 (ii) a public park;
 30 while a person under eighteen (18) years of age was
 31 reasonably expected to be present.
- 32 (f) In addition to a criminal or civil penalty imposed for a violation
 33 of this section, if the court finds that a person has violated this section
 34 and the violation involved the sale of or offer to sell, in the normal
 35 course of business, a synthetic drug or a synthetic drug lookalike
 36 substance by a retail merchant in a place of business for which the
 37 retail merchant has been issued a registered retail merchant certificate,
 38 the court:
- 39 (1) shall recommend the suspension of the registered retail
 40 merchant certificate for the place of business for one (1) year if
 41 the person's violation of this section resulted in a criminal
 42 conviction; and



1 (2) may recommend the suspension of the registered retail
 2 merchant certificate for the place of business for six (6) months
 3 if the person's violation of this section resulted in an adjudication
 4 that the person committed an infraction.

5 (g) The department of state revenue shall suspend the registered
 6 retail merchant certificate of a retail merchant in accordance with the
 7 recommendation of the court. Whenever the department of state
 8 revenue is required to suspend a retail merchant's registered retail
 9 merchant certificate under this section, the department shall
 10 immediately mail a notice to the retail merchant's address that must
 11 state that the retail merchant's registered retail merchant certificate will
 12 be suspended for the period recommended by the court, commencing
 13 five (5) days after the date of the notice.

14 SECTION 5. IC 35-48-4-11, AS AMENDED BY P.L.153-2018,
 15 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2019]: Sec. 11. (a) A person who:

17 (1) knowingly or intentionally possesses (pure or adulterated)
 18 marijuana, hash oil, hashish, or salvia;
 19 (2) knowingly or intentionally grows or cultivates marijuana; or
 20 (3) knowing that marijuana is growing on the person's premises,
 21 fails to destroy the marijuana plants;
 22 commits possession of marijuana, hash oil, hashish, or salvia, a Class
 23 B misdemeanor, except as provided in subsections (b) through (c).

24 (b) The offense described in subsection (a) is a Class A
 25 misdemeanor if:

26 (1) the person:
 27 (A) has a prior conviction for a drug offense; or
 28 (B) commits the offense on the property of a penal facility
 29 or a juvenile facility (as defined in IC 35-44.1-3-5); or
 30 (2) the:
 31 (A) marijuana, hash oil, hashish, or salvia is packaged in a
 32 manner that appears to be low THC hemp extract; and
 33 (B) person knew or reasonably should have known that the
 34 product was marijuana, hash oil, hashish, or salvia.

35 (c) The offense described in subsection (a) is a Level 6 felony if:
 36 (1) the person:
 37 (A) has a prior conviction for a drug offense; or
 38 (B) commits the offense on the property of a penal facility
 39 or a juvenile facility (as defined in IC 35-44.1-3-5); and
 40 (2) the person possesses:
 41 (A) at least thirty (30) grams of marijuana; or
 42 (B) at least five (5) grams of hash oil, hashish, or salvia.



1 SECTION 6. IC 35-48-4-11.5, AS AMENDED BY P.L.168-2014,
2 SECTION 103, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2019]: Sec. 11.5. (a) As used in this section,
4 "synthetic drug lookalike substance" has the meaning set forth in
5 IC 35-31.5-2-321.5(a)(2).

6 (b) A person who possesses a synthetic drug or synthetic drug
7 lookalike substance commits possession of a synthetic drug or synthetic
8 drug lookalike substance, a Class B infraction.

9 (c) A person who knowingly or intentionally possesses a synthetic
10 drug or synthetic drug lookalike substance commits possession of a
11 synthetic drug or synthetic drug lookalike substance, a Class A
12 misdemeanor. However, the offense is a Level 6 felony if the person:

13 **(1)** has a prior unrelated conviction under this section or under
14 section 10.5 of this chapter; **or**

15 **(2) commits the offense on the property of a penal facility or**
16 **a juvenile facility (as defined in IC 35-44.1-3-5).**

