

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1311 Session of
2005

INTRODUCED BY PICKETT, BAKER, BALDWIN, J. EVANS, GOOD, ARGALL,
BOYD, CALTAGIRONE, CAPPELLI, CAUSER, CLYMER, CRAHALLA, CRUZ,
DALLY, DENLINGER, DIGIROLAMO, FABRIZIO, FLEAGLE, GEIST,
GINGRICH, GRELL, HENNESSEY, HERMAN, HERSHEY, HICKERNELL,
W. KELLER, KILLION, MAJOR, MARKOSEK, MARSICO, McILHATTAN,
O'BRIEN, PYLE, RAPP, RUBLEY, SCAVELLO, R. STEVENSON,
E. Z. TAYLOR, TRUE, TURZAI, WATSON, WHEATLEY, WILT,
YOUNGBLOOD, BROWNE AND HARPER, APRIL 11, 2005

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
DECEMBER 14, 2005

AN ACT

1 Amending the act of April 14, 1972 (P.L.233, No.64), entitled
2 "An act relating to the manufacture, sale and possession of
3 controlled substances, other drugs, devices and cosmetics;
4 conferring powers on the courts and the secretary and
5 Department of Health, and a newly created Pennsylvania Drug,
6 Device and Cosmetic Board; establishing schedules of
7 controlled substances; providing penalties; requiring
8 registration of persons engaged in the drug trade and for the
9 revocation or suspension of certain licenses and
10 registrations; and repealing an act," further providing for
11 prohibited acts and penalties AND FOR EFFECT ON LOCAL
12 ORDINANCES. <—

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Section 13(c) of the act of April 14, 1972
16 (P.L.233, No.64), known as The Controlled Substance, Drug,
17 Device and Cosmetic Act, amended December 14, 1984 (P.L.988,
18 No.200), is amended ~~and~~, subsection (a) is amended by adding <—
19 clauses AND THE SECTION IS AMENDED BY ADDING A SUBSECTION to <—

1 read:

2 Section 13. Prohibited Acts; Penalties.--(a) The following
3 acts and the causing thereof within the Commonwealth are hereby
4 prohibited:

5 * * *

6 (39) The sale at retail of any product containing ephedrine,
7 pseudoephedrine, phenylpropanolamine, or any of their salts,
8 optical isomers or salts of optical isomers as the sole active
9 ingredient unless one of the following applies:

10 (i) The product is offered for sale behind a counter where
11 the public is not permitted.

12 (ii) The product is offered for sale using any type of
13 antitheft device system, including, but not limited to, an
14 electronic antitheft device system that utilizes a product tag
15 and detection alarm which prevents the theft of the product.

16 (40) The delivery, in any single over-the-counter retail
17 sale, of more than three packages, or any number of packages
18 that contain a combined total of more than nine grams of any
19 product containing ephedrine, pseudoephedrine,
20 phenylpropanolamine, or any of their salts, optical isomers or
21 salts of optical isomers as the sole active ingredient, or in
22 combination with other active ingredients. This clause shall not
23 apply to any of the following:

24 (i) Pediatric products labeled pursuant to Federal
25 regulation primarily intended for administration to children
26 under 12 years of age according to label instructions.

27 (ii) Any compound, mixture, or preparation in liquid, liquid
28 capsule, or liquid gel capsule form if ephedrine,
29 pseudoephedrine or phenylpropanolamine is not the only active
30 ingredient.

1 (iii) Any compound, mixture, or preparation which has been
2 determined by the secretary to be formulated in such a way as to
3 effectively prevent the conversion of the active ingredient into
4 methamphetamine or its salts or optical isomers or salts of
5 optical isomers.

6 * * *

7 (c) Any person who violates the provisions of clauses (21),
8 (22) [and (24)], (24), (39) and (40) of subsection (a) shall be
9 guilty of a misdemeanor, and shall, on conviction thereof, be
10 punished only as follows:

11 (1) Upon conviction of the first such offense, he shall be
12 sentenced to imprisonment not exceeding six months, or to pay a
13 fine not exceeding ten thousand dollars (\$10,000), or both.

14 (2) Upon conviction of the second and subsequent offense, he
15 shall be sentenced to imprisonment not exceeding two years, or
16 to pay a fine not exceeding twenty-five thousand dollars
17 (\$25,000), or both.

18 * * *

19 (Q) THE FOLLOWING APPLY:

20 (1) IT IS AN AFFIRMATIVE DEFENSE FOR A RETAILER TO AN
21 OFFENSE UNDER SUBSECTION (A)(39) AND (40) THAT, PRIOR TO THE
22 DATE OF THE ALLEGED VIOLATION, THE RETAILER HAS COMPLIED WITH
23 ALL OF THE FOLLOWING:

24 (I) ADOPTED AND IMPLEMENTED A WRITTEN POLICY AGAINST SELLING
25 IN ANY SINGLE OVER-THE-COUNTER RETAIL SALE OF MORE THAN THREE
26 PACKAGES OR ANY NUMBER OF PACKAGES THAT CONTAIN A COMBINED TOTAL
27 OF MORE THAN NINE GRAMS OF ANY PRODUCT CONTAINING EPHEDRINE,
28 PSEUDOEPHEDRINE, PHENYLPROPANOLAMINE OR ANY OF THEIR SALTS,
29 OPTICAL ISOMERS AS THE SOLE ACTIVE INGREDIENT.

30 (II) ADOPTED AND IMPLEMENTED A DISCIPLINARY POLICY WHICH

1 INCLUDES EMPLOYE COUNSELING AND POSSIBLE SUSPENSION AND
2 PENALTIES UP TO AND INCLUDING DISMISSAL FOR FAILURE TO LIMIT THE
3 DELIVERY, IN ANY SINGLE OVER-THE-COUNTER RETAIL SALE OF PRODUCTS
4 CONTAINING PSEUDOEPHEDRINE, EPHEDRINE OR PHENYLPROPANOLAMINE AS
5 THEIR SOLE ACTIVE INGREDIENT TO NO MORE THAN NINE GRAMS OR THREE
6 PACKAGES.

7 (III) INFORMED ALL EMPLOYES SELLING PRODUCTS CONTAINING
8 PSEUDOEPHEDRINE, EPHEDRINE OR PHENYLPROPANOLAMINE AS THEIR SOLE
9 ACTIVE INGREDIENT THROUGH AN ESTABLISHED TRAINING PROGRAM OF THE
10 APPLICABLE FEDERAL AND STATE LAWS REGARDING LIMITING THE SALE OF
11 SUCH PRODUCTS.

12 (IV) DOCUMENTED EMPLOYE TRAINING INDICATING THAT ALL
13 EMPLOYES SELLING PRODUCTS CONTAINING PSEUDOEPHEDRINE, EPHEDRINE
14 AND PHENYLPROPANOLAMINE AS THEIR SOLE ACTIVE INGREDIENT HAVE
15 BEEN INFORMED OF AND UNDERSTAND THE WRITTEN POLICY REFERRED TO
16 IN SUBCLAUSE (I).

17 (V) TRAINED ALL EMPLOYES SELLING PRODUCTS CONTAINING
18 PSEUDOEPHEDRINE, EPHEDRINE OR PHENYLPROPANOLAMINE AS THEIR SOLE
19 ACTIVE INGREDIENT TO LIMIT THE NUMBER OF PACKAGES TO THREE OR TO
20 NO MORE THAN NINE GRAMS OF PRODUCTS CONTAINING PSEUDOEPHEDRINE,
21 EPHEDRINE OR PHENYLPROPANOLAMINE AS THEIR SOLE ACTIVE INGREDIENT
22 IN ANY SINGLE OVER-THE-COUNTER RETAIL SALE.

23 (VI) CONSPICUOUSLY POSTED A NOTICE THAT SELLING MORE THAN
24 THREE PACKAGES OR NINE GRAMS OF PRODUCTS CONTAINING
25 PSEUDOEPHEDRINE, EPHEDRINE OR PHENYLPROPANOLAMINE AS THEIR SOLE
26 ACTIVE INGREDIENT IN ANY SINGLE OVER-THE-COUNTER RETAIL SALE IS
27 AGAINST THE LAW AND THAT A VIOLATOR IS SUBJECT TO PENALTIES.

28 (VII) ESTABLISHED AND IMPLEMENTED DISCIPLINARY SANCTIONS FOR
29 NONCOMPLIANCE WITH THE POLICY UNDER SUBCLAUSE (I).

30 (2) AN AFFIRMATIVE DEFENSE UNDER THIS SUBSECTION MUST BE

1 PROVED BY A PREPONDERANCE OF THE EVIDENCE.

2 (3) AN AFFIRMATIVE DEFENSE UNDER THIS SUBSECTION MAY BE USED
3 BY A RETAILER NO MORE THAN THREE TIMES AT EACH RETAIL LOCATION
4 DURING ANY TWENTY-FOUR MONTH PERIOD.

5 SECTION 2. SECTION 41.1 OF THE ACT, ADDED DECEMBER 4, 1980
6 (P.L.1043, NO.186), IS AMENDED TO READ:

7 SECTION 41.1. EFFECT ON LOCAL ORDINANCES.--(A) NOTHING IN
8 THIS ACT RELATING TO DRUG PARAPHERNALIA SHALL BE DEEMED TO
9 SUPERSEDE OR INVALIDATE ANY CONSISTENT LOCAL ORDINANCE,
10 INCLUDING ZONING AND NUISANCE ORDINANCES, RELATING TO THE
11 POSSESSION, SALE OR USE OF DRUG PARAPHERNALIA.

12 (B) THE PROVISIONS OF SECTION 13(A)(39) AND (40), (C) AND
13 (Q) SHALL PREEMPT ANY INCONSISTENT LOCAL ORDINANCE, INCLUDING
14 ZONING AND NUISANCE ORDINANCES, RELATING TO THE SALE,
15 DISBURSEMENT OR DISTRIBUTION OF EPHEDRINE, PSEUDOEPHEDRINE OR
16 PHENYLPROPANOLAMINE.

17 Section ~~2~~ 3. This act shall take effect in 60 days.

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