

CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT - OMNIBUS
AMENDMENTS

Act of Apr. 29, 2010, P.L. 182, No. 21

Cl. 35

Session of 2010
No. 2010-21

SB 126

AN ACT

Amending the act of April 14, 1972 (P.L.233, No.64), entitled "An act relating to the manufacture, sale and possession of controlled substances, other drugs, devices and cosmetics; conferring powers on the courts and the secretary and Department of Health, and a newly created Pennsylvania Drug, Device and Cosmetic Board; establishing schedules of controlled substances; providing penalties; requiring registration of persons engaged in the drug trade and for the revocation or suspension of certain licenses and registrations; and repealing an act," further providing for prohibited acts and penalties, for liquefied ammonia gas, precursors and chemicals, for methamphetamine production, for operating a methamphetamine laboratory and illegal dumping of methamphetamine waste and for environmental costs.

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

Section 1. Section 13(a)(39) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, added February 17, 2010 (P.L.137, No.8), is amended to read:

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

* * *

(39) The knowing possession of ephedrine, pseudoephedrine[,]
or phenylpropanolamine [or a product containing ephedrine,
pseudoephedrine, phenylpropanolamine], or any of their salts,
optical isomers or salts of optical isomers with the intent to
manufacture methamphetamine.

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Section 2. Section 13.1 of the act, added July 15, 2004 (P.L.729, No.84), is amended to read:

Section 13.1. Liquefied Ammonia Gas; Precursors and Chemicals.--(a) The following acts are prohibited:

(1) Possessing or transporting liquefied ammonia gas:

(i) for any purpose other than legitimate agricultural or industrial use; or

(ii) in a container not approved by the Department of Agriculture or the Department of Transportation or both.

(2) Possessing or transporting liquefied ammonia gas with intent to manufacture a controlled substance.

(3) Possessing red phosphorous, hypophosphoric acid, ammonium sulfate, phosphorous, iodine, hydriodic acid, ephedrine, pseudoephedrine, lithium, sodium, potassium, sassafras oil, safrole oil or other oil containing safrole or equivalent, whether in powder or liquid form, **phenylpropanolamine, phenyl acetone, methylamine, ammonium sulfate, ammonium nitrate or phenyl acetic acid** with intent to manufacture a controlled substance.

(4) Possessing the esters, salts, optical isomers or salts of optical isomers of any of the substances under clause (3) with intent to manufacture a controlled substance.

(b) A person who violates subsection (a)(1) commits a misdemeanor and upon conviction shall be sentenced to imprisonment not exceeding five years and to pay a fine not exceeding ten thousand dollars (\$10,000).

(c) A person who violates subsection (a)(2) or (3) commits a felony and upon conviction shall be sentenced to imprisonment not exceeding seven years and to pay a fine not exceeding fifteen thousand dollars (\$15,000).

Section 3. Sections 13.3, 13.4 and 13.5 of the act, added February 17, 2010 (P.L.137, No.8), are amended to read:

Section 13.3. Methamphetamine Production.--(a) Proof that a person had in his possession more than 40 grams or 15 packages of any drug containing ephedrine, pseudoephedrine[,] **or** phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers as an active ingredient shall give rise to a rebuttable presumption that the person acted with intent to manufacture methamphetamine.

(b) Proof that a person had in his possession any amount of ephedrine, pseudoephedrine[,] **or** phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers [as an active ingredient] and at the same time possessed any amount of any [precursor] **other precursor or reagent** substance under section 13.1 shall give rise to a rebuttable presumption that the person acted with intent to manufacture methamphetamine.

(c) The provisions of this section shall not apply to a licensed pharmaceutical manufacturer, wholesaler, or the sales representative of a licensed manufacturer or wholesaler, or to a licensed pharmacist or licensed health care professional, or to any other person engaged by a licensed manufacturer, wholesaler, pharmacist or health care provider, who lawfully markets, transports, delivers or dispenses a product containing ephedrine, pseudoephedrine[,] **or** phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers.

Section 13.4. Operating a Methamphetamine Laboratory and Illegal Dumping of Methamphetamine Waste.--(a) (1) A person commits the offense of operating a methamphetamine laboratory if the person knowingly causes a chemical reaction involving ephedrine, pseudoephedrine or phenylpropanolamine [or any of their salts, optical isomers or salts of optical isomers], **or any other precursor or reagent substance under section 13.1**, for the purpose of manufacturing methamphetamine or preparing a precursor **or reagent** substance for the manufacture of methamphetamine.

(2) Except as provided in clause (3), an offense under this subsection constitutes a felony of the second degree and is **also** subject to 18 Pa.C.S. § 1110 (relating to restitution for cleanup of clandestine laboratories).

(3) A person who violates this subsection commits a felony of the first degree [and is subject to 18 Pa.C.S. § 1110] if the chemical reaction occurs within 1,000 feet of the real property on which is located a public, private or parochial school, a college or university or a nursery school or daycare center or within 250 feet of the real property on which is located a recreation center or playground. **The person shall also be subject to 18 Pa.C.S. § 1110.**

(4) This subsection does not apply to the manufacturing operation of a licensed pharmaceutical company in the normal course of business.

(b) (1) A person commits a felony of the third degree if he intentionally, knowingly or recklessly deposits, stores or disposes

on any property a precursor **or reagent** substance, chemical waste or debris, used in or resulting from the manufacture of methamphetamine or the preparation of a precursor **or reagent** substance for the manufacture of methamphetamine.

(2) Clause (1) does not apply to the disposal of waste products:

(i) by a licensed pharmaceutical company in the normal course of business; or

(ii) pursuant to Federal or State laws regulating the cleanup or disposal of waste products from unlawful manufacturing of methamphetamine.

(c) In addition to restitution under 18 Pa.C.S. § 1110, a person who is convicted of an offense under [subsection (a) or the use of a precursor substance to manufacture methamphetamine] **this section** shall be ordered to reimburse the appropriate law enforcement agency, emergency medical services organization, fire company or other organization for the costs of cleaning up the environmental hazards associated with the operation of the laboratory or the **possession or** use of a precursor **or reagent** substance to manufacture methamphetamine.

Section 13.5. Environmental Costs.--In addition to restitution under 18 Pa.C.S. § 1110 (relating to restitution for cleanup of clandestine laboratories), a person who is convicted of an offense involving the operation of a methamphetamine laboratory or the **possession or** use of a precursor **or reagent** substance to manufacture methamphetamine shall be ordered to reimburse the appropriate law enforcement agency, emergency medical services organization, fire company or other organization for the costs of cleaning up the environmental hazards associated with the operation of the laboratory or the **possession or** use of a precursor **or reagent** substance to manufacture methamphetamine.

Section 4. This act shall take effect April 19, 2010, or immediately, whichever is later.

APPROVED--The 29th day of April, A.D. 2010.

EDWARD G. RENDELL