

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1607 Session of
2005

INTRODUCED BY RAPP, J. EVANS, CAUSER, PICKETT, BAKER, BOYD,
BUNT, CALTAGIRONE, CAPPELLI, CLYMER, CRAHALLA, CREIGHTON,
FAIRCHILD, GINGRICH, GOOD, HARRIS, REICHLEY, RUBLEY, STERN,
TIGUE, TRUE, TURZAI AND DENLINGER, JUNE 3, 2005

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
DECEMBER 6, 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 ~~penalties for certain offenses involving marijuana.~~ FURTHER <—
12 PROVIDING FOR SCHEDULES OF CONTROLLED SUBSTANCES, FOR
13 PROFESSIONAL PRESCRIPTION, ADMINISTRATION AND DISPENSING, FOR
14 PROHIBITED ACTS AND PENALTIES INVOLVING EPHEDRINE,
15 PSEUDOEPHEDRINE AND MARIJUANA AND FOR EFFECT ON LOCAL
16 ORDINANCES.

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

19 ~~Section 1. Section 13(f) of the act of April 14, 1972~~ <—
20 ~~(P.L.233, No.64), known as The Controlled Substance, Drug,~~
21 ~~Device and Cosmetic Act, is amended by adding a clause to read:~~
22 ~~Section 13. Prohibited Acts; Penalties. * * *~~
23 ~~(f) Any person who violates clause (12), (14) or (30) of~~

1 ~~subsection (a) with respect to:~~

2 ~~* * *~~

3 ~~(1.2) Marijuana, where the amount of marijuana involved is~~
4 ~~at least two (2) pounds but not in excess of one thousand~~
5 ~~(1,000) pounds, or at least ten (10) live plants, is guilty of a~~
6 ~~felony and upon conviction thereof shall be sentenced to~~
7 ~~imprisonment not exceeding seven years, or to pay a fine not~~
8 ~~exceeding fifteen thousand dollars (\$15,000), or both, or a~~
9 ~~larger amount as is sufficient to exhaust the assets utilized in~~
10 ~~and the profits obtained from the illegal manufacture or~~
11 ~~distribution of this substance.~~

12 ~~* * *~~

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

14 SECTION 1. SECTION 4(5) OF THE ACT OF APRIL 14, 1972
15 (P.L.233, NO.64), KNOWN AS THE CONTROLLED SUBSTANCE, DRUG,
16 DEVICE AND COSMETIC ACT, AMENDED JULY 3, 1985 (P.L.138, NO.39),
17 IS AMENDED AND THE SECTION IS AMENDED BY ADDING CLAUSES TO READ:
18 SECTION 4. SCHEDULES OF CONTROLLED SUBSTANCES.--THE
19 FOLLOWING SCHEDULES INCLUDE THE CONTROLLED SUBSTANCES LISTED OR
20 TO BE LISTED BY WHATEVER OFFICIAL NAME, COMMON OR USUAL NAME,
21 CHEMICAL NAME, OR TRADE NAME DESIGNATED.

22 * * *

23 (5) SCHEDULE V--IN DETERMINING THAT A SUBSTANCE COMES WITHIN
24 THIS SCHEDULE, THE SECRETARY SHALL FIND: A LOW POTENTIAL FOR
25 ABUSE RELATIVE TO THE SUBSTANCES LISTED IN SCHEDULE IV;
26 CURRENTLY ACCEPTED MEDICAL USE IN THE UNITED STATES; AND LIMITED
27 PHYSICAL DEPENDENCE AND/OR PSYCHOLOGICAL DEPENDENCE LIABILITY
28 RELATIVE TO THE SUBSTANCES LISTED IN SCHEDULE IV. THE FOLLOWING
29 CONTROLLED SUBSTANCES ARE INCLUDED IN THIS SCHEDULE:

30 (I) ANY COMPOUND, MIXTURE, OR PREPARATION CONTAINING LIMITED

1 QUANTITIES OF ANY OF THE FOLLOWING NARCOTICS OR ANY OF THEIR
2 SALTS, WHICH SHALL INCLUDE ONE OR MORE NONNARCOTIC ACTIVE
3 MEDICINAL INGREDIENTS IN SUFFICIENT PROPORTION TO CONFER UPON
4 THE COMPOUND, MIXTURE, OR PREPARATION, VALUABLE MEDICINAL
5 QUALITIES OTHER THAN THOSE POSSESSED BY THE NARCOTIC ALONE:

6 1. NOT MORE THAN 200 MILLIGRAMS OF CODEINE, OR ANY OF ITS
7 SALTS, PER 100 MILLILITER OR PER 100 GRAMS AND NOT MORE THAN 10
8 MILLIGRAMS PER DOSAGE UNIT.

9 2. NOT MORE THAN 100 MILLIGRAMS OF DIHYDROCODEINE, OR ANY OF
10 ITS SALTS, PER 100 MILLILITERS OR PER 100 GRAMS AND NOT MORE
11 THAN 5 MILLIGRAMS PER DOSAGE UNIT.

12 3. NOT MORE THAN 100 MILLIGRAMS OF ETHYLMORPHINE, OR ANY OF
13 ITS SALTS, PER 100 MILLILITERS OR PER 100 GRAMS AND NOT MORE
14 THAN 5 MILLIGRAMS PER DOSAGE UNIT.

15 4. NOT MORE THAN 2.5 MILLIGRAMS OF DIPHENOXYLATE AND NOT
16 LESS THAN 25 MICROGRAMS OF ATROPINE SULFATE PER DOSAGE UNIT.

17 5. NOT MORE THAN 100 MILLIGRAMS OF OPIUM PER 100 MILLILITERS
18 OR PER 100 GRAMS, OR NOT MORE THAN 5 MILLIGRAMS PER DOSAGE UNIT.

19 6. ANY DETECTABLE QUANTITY OF EPHEDRINE, ITS SALTS OR
20 OPTICAL ISOMERS, OR SALTS OF OPTICAL ISOMERS, EXCEPT FOR:

21 (I) PEDIATRIC PRODUCTS IN LIQUID FORM THAT ARE LABELED
22 PURSUANT TO FEDERAL REGULATION AS PRIMARILY INTENDED FOR
23 ADMINISTRATION TO CHILDREN UNDER 12 YEARS OF AGE ACCORDING TO
24 LABEL INSTRUCTIONS AND ACCORDING TO LABEL INSTRUCTIONS DO NOT
25 EXCEED 15 MILLIGRAMS OF EPHEDRINE PER 5 MILLILITERS OF LIQUID
26 PRODUCT; OR

27 (II) ANY COMPOUND, MIXTURE OR PREPARATION IN LIQUID, LIQUID
28 CAPSULE OR LIQUID GEL CAPSULE FORM IF EPHEDRINE IS NOT THE ONLY
29 ACTIVE INGREDIENT.

30 7. ANY DETECTABLE QUANTITY OF PSEUDOEPHEDRINE, ITS SALTS OR

OPTICAL ISOMERS, OR SALTS OF OPTICAL ISOMERS, EXCEPT FOR:

(I) PEDIATRIC PRODUCTS IN LIQUID FORM THAT ARE LABELED
PURSUANT TO FEDERAL REGULATIONS AS PRIMARILY INTENDED FOR
ADMINISTRATION TO CHILDREN UNDER 12 YEARS OF AGE ACCORDING TO
LABEL INSTRUCTIONS AND ACCORDING TO LABEL INSTRUCTIONS DO NOT
EXCEED 15 MILLIGRAMS OF PSEUDOEPHEDRINE PER 5 MILLILITERS OF
LIQUID PRODUCT; OR

(II) ANY COMPOUND, MIXTURE OR PREPARATION IN LIQUID, LIQUID
CAPSULE OR LIQUID GEL CAPSULE FORM IF PSEUDOEPHEDRINE IS NOT THE
ONLY ACTIVE INGREDIENT.

(II) BUPRENORPHINE.

SECTION 2. SECTION 11 OF THE ACT IS AMENDED BY ADDING
SUBSECTIONS TO READ:

SECTION 11. PROFESSIONAL PRESCRIPTION, ADMINISTRATION, AND
DISPENSING.--* * *

(C.1) THE SUBSTANCES DESCRIBED IN SECTION 4(5)(1)(6) AND (7)
SHALL BE DISPENSED, SOLD OR DISTRIBUTED ONLY IN A PHARMACY AND
THE FOLLOWING SHALL APPLY:

(1) THE SUBSTANCES MAY BE DISPENSED, SOLD OR DISTRIBUTED
ONLY BY A LICENSED PHARMACIST OR LICENSED PHARMACY TECHNICIAN.

(2) THE SUBSTANCES MAY NOT BE DISPENSED, SOLD OR DISTRIBUTED
TO ANY PERSON UNDER 18 YEARS OF AGE.

(3) ANY PERSON PURCHASING, RECEIVING OR OTHERWISE ACQUIRING
ANY OF THE SUBSTANCES SHALL:

(I) PRODUCE A GOVERNMENT-ISSUED PHOTO IDENTIFICATION SHOWING
THE DATE OF BIRTH OF THE PERSON; AND

(II) SIGN A WRITTEN LOG OR RECEIPT SHOWING THE DATE OF THE
TRANSACTION, THE NAME OF THE PERSON AND THE NAME AND AMOUNT OF
THE SUBSTANCE PURCHASED, RECEIVED OR OTHERWISE ACQUIRED.

(4) NO PERSON SHALL PURCHASE, RECEIVE OR OTHERWISE ACQUIRE

1 MORE THAN 7.5 GRAMS OF THE SUBSTANCES WITHIN ANY 30-DAY PERIOD.

2 (5) NO LICENSED PHARMACIST OR LICENSED PHARMACY TECHNICIAN
3 SHALL DISPENSE, SELL OR DISTRIBUTE MORE THAN 7.5 GRAMS OF THE
4 SUBSTANCES TO A SINGLE PURCHASER WITHIN ANY 30-DAY PERIOD.

5 (6) THE LIMITS DESCRIBED IN PARAGRAPHS (4) AND (5) SHALL NOT
6 APPLY TO ANY QUANTITY OF THE SUBSTANCES DISPENSED UNDER A VALID
7 PRESCRIPTION.

8 (7) THE SUBSTANCES DESCRIBED IN SECTION 4(5)(I)(6)(II) AND
9 (7)(II) MAY BE DISPENSED, SOLD OR DISTRIBUTED IN A PHARMACY AND
10 SHALL BE SUBJECT TO THE REQUIREMENTS OF THIS SUBSECTION WHEN
11 DISPENSED, SOLD OR DISTRIBUTED IN A PHARMACY.

12 (8) THE SECRETARY, UPON APPLICATION OF A MANUFACTURER OF A
13 DRUG PRODUCT, MAY EXEMPT A PRODUCT FROM SECTION 4(5)(I)(6) AND
14 (7) IF THE SECRETARY DETERMINES THAT THE PRODUCT HAS BEEN
15 FORMULATED IN SUCH A WAY AS TO PREVENT EFFECTIVELY THE
16 CONVERSION OF THE ACTIVE INGREDIENT INTO METHAMPHETAMINE.

17 (C.2) THE SUBSTANCES DESCRIBED IN SECTION 4(5)(I)(6)(II) AND
18 (7)(II) MAY BE DISPENSED, SOLD OR DISTRIBUTED AT A NONPHARMACY
19 RETAIL OUTLET AND THE FOLLOWING SHALL APPLY:

20 (1) THE SUBSTANCES MUST BE KEPT IN A LOCKED CASE OR BEHIND A
21 COUNTER NOT ACCESSIBLE TO THE PUBLIC.

22 (2) THE SUBSTANCES MAY NOT BE DISPENSED, SOLD OR DISTRIBUTED
23 TO ANY PERSON UNDER 18 YEARS OF AGE.

24 (3) ANY PERSON PURCHASING, RECEIVING OR OTHERWISE ACQUIRING
25 ANY OF THE SUBSTANCES SHALL:

26 (I) PRODUCE A GOVERNMENT-ISSUED PHOTO IDENTIFICATION SHOWING
27 THE DATE OF BIRTH OF THE PERSON; AND

28 (II) SIGN A WRITTEN LOG OR RECEIPT SHOWING THE DATE OF THE
29 TRANSACTION, THE NAME OF THE PERSON AND THE NAME AND THE AMOUNT
30 OF THE SUBSTANCE PURCHASED, RECEIVED OR OTHERWISE ACQUIRED.

1 (4) NO PERSON SHALL PURCHASE, RECEIVE OR OTHERWISE ACQUIRE
2 MORE THAN 360 MILLIGRAMS OF THE SUBSTANCES WITHIN ANY 24-HOUR
3 PERIOD.

4 (5) NO NONPHARMACY RETAIL OUTLET SHALL DISPENSE, SELL OR
5 DISTRIBUTE MORE THAN 360 MILLIGRAMS OF THE SUBSTANCES TO A
6 SINGLE PURCHASER WITHIN ANY 24-HOUR PERIOD.

7 (6) NO PERSON SHALL PURCHASE, RECEIVE OR OTHERWISE ACQUIRE
8 MORE THAN 7.5 GRAMS OF THE SUBSTANCES WITHIN ANY 30-DAY PERIOD.

9 (7) NO NONPHARMACY RETAIL OUTLET SHALL DISPENSE, SELL OR
10 DISTRIBUTE MORE THAN 7.5 GRAMS OF THE SUBSTANCES TO A SINGLE
11 PURCHASER WITHIN ANY 30-DAY PERIOD.

12 (8) THE SECRETARY, UPON APPLICATION OF A MANUFACTURER OF A
13 DRUG PRODUCT, MAY EXEMPT THE PRODUCT FROM SECTION 4(5)(I)(6) AND
14 (7) IF THE SECRETARY DETERMINES THAT THE PRODUCT HAS BEEN
15 FORMULATED IN SUCH A WAY AS TO PREVENT EFFECTIVELY THE
16 CONVERSION OF THE ACTIVE INGREDIENT INTO METHAMPHETAMINE.

17 * * *

18 SECTION 3. SECTION 13(A) AND (F) ARE AMENDED BY ADDING
19 CLAUSES AND THE SECTION IS AMENDED BY ADDING A SUBSECTION TO
20 READ:

21 SECTION 13. PROHIBITED ACTS; PENALTIES.--(A) THE FOLLOWING
22 ACTS AND THE CAUSING THEREOF WITHIN THE COMMONWEALTH ARE HEREBY
23 PROHIBITED:

24 * * *

25 (39) THE KNOWING OR INTENTIONAL DISPENSING, SALE OR
26 DISTRIBUTION OF A SUBSTANCE IN VIOLATION OF SECTION 11(C.1) OR
27 (C.2).

28 (40) THE KNOWING OR INTENTIONAL ENTRY OF FALSE INFORMATION
29 IN THE LOG REQUIRED UNDER SECTION 11(C.1)(3)(II) OR
30 (C.2)(3)(II).

1 * * *

2 (F) ANY PERSON WHO VIOLATES CLAUSE (12), (14) OR (30) OF
3 SUBSECTION (A) WITH RESPECT TO:

4 * * *

5 (1.2) MARIJUANA, WHERE THE AMOUNT OF MARIJUANA INVOLVED IS
6 AT LEAST TWO (2) POUNDS BUT NOT IN EXCESS OF ONE THOUSAND
7 (1,000) POUNDS, OR AT LEAST TEN (10) LIVE PLANTS, IS GUILTY OF A
8 FELONY AND UPON CONVICTION THEREOF SHALL BE SENTENCED TO
9 IMPRISONMENT NOT EXCEEDING SEVEN YEARS, OR TO PAY A FINE NOT
10 EXCEEDING FIFTEEN THOUSAND DOLLARS (\$15,000), OR BOTH, OR A
11 LARGER AMOUNT AS IS SUFFICIENT TO EXHAUST THE ASSETS UTILIZED IN
12 AND THE PROFITS OBTAINED FROM THE ILLEGAL MANUFACTURE OR
13 DISTRIBUTION OF THIS SUBSTANCE.

14 * * *

15 (Q) ANY PERSON WHO VIOLATES SUBSECTION (A)(39) OR (40) IS
16 GUILTY OF A MISDEMEANOR OF THE FIRST DEGREE AND, UPON CONVICTION
17 THEREOF, SHALL BE SENTENCED TO IMPRISONMENT NOT EXCEEDING FIVE
18 YEARS OR TO PAY A FINE NOT EXCEEDING TEN THOUSAND DOLLARS
19 (\$10,000), OR BOTH.

20 SECTION 4. SECTION 13.1 OF THE ACT, ADDED JULY 15, 2004
21 (P.L.729, NO.84), IS AMENDED TO READ:

22 SECTION 13.1. LIQUEFIED AMMONIA GAS; PRECURSORS AND
23 CHEMICALS.--(A) THE FOLLOWING ACTS ARE PROHIBITED:

24 (1) POSSESSING OR TRANSPORTING LIQUEFIED AMMONIA GAS:

25 (I) FOR ANY PURPOSE OTHER THAN LEGITIMATE AGRICULTURAL OR
26 INDUSTRIAL USE; OR

27 (II) IN A CONTAINER NOT APPROVED BY THE DEPARTMENT OF
28 AGRICULTURE OR THE DEPARTMENT OF TRANSPORTATION OR BOTH.

29 (2) POSSESSING OR TRANSPORTING LIQUEFIED AMMONIA GAS WITH
30 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, WITH INTENT TO MANUFACTURE A CONTROLLED SUBSTANCE.

(4) POSSESSING OR TRANSPORTING IN A VEHICLE A SUBSTANCE CONTAINING ANY DETECTABLE QUANTITY OF EPHEDRINE, ITS SALTS OR OPTICAL ISOMERS OR SALTS OF OPTICAL ISOMERS, OR ANY DETECTABLE QUANTITY OF PSEUDOEPHEDRINE, ITS SALTS OR OPTICAL ISOMERS OR SALTS OR OPTICAL ISOMERS, WITH KNOWLEDGE OR INTENT THAT THE SUBSTANCE WILL BE USED 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).

(D) A PERSON WHO VIOLATES SUBSECTION (A)(4) COMMITS A FELONY OF THE SECOND DEGREE AND UPON CONVICTION SHALL BE SENTENCED TO IMPRISONMENT NOT EXCEEDING TEN YEARS OR TO PAY A FINE NOT EXCEEDING TWENTY FIVE THOUSAND DOLLARS (\$25,000) OR BOTH.

SECTION 5. SECTION 41.1 OF THE ACT, ADDED DECEMBER 4, 1980 (P.L.1093, NO.186), IS AMENDED TO READ:

SECTION 41.1. EFFECT ON LOCAL ORDINANCES.--(A) NOTHING IN THIS ACT RELATING TO DRUG PARAPHERNALIA SHALL BE DEEMED TO SUPERSEDE OR INVALIDATE ANY CONSISTENT LOCAL ORDINANCE, INCLUDING ZONING AND NUISANCE ORDINANCES, RELATING TO THE

1 POSSESSION, SALE OR USE OF DRUG PARAPHERNALIA.

2 (B) THE PROVISIONS OF SECTION 11(C.1) AND (C.2) SHALL
3 PREEMPT ANY INCONSISTENT LOCAL ORDINANCE, INCLUDING ZONING AND
4 NUISANCE ORDINANCES, RELATING TO THE DISBURSEMENT, SALE OR
5 DISTRIBUTION OF EPHEDRINE OR PSEUDOEPHEDRINE.

6 SECTION 6. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.