

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 955 Session of
2005

INTRODUCED BY KASUNIC, COSTA, BOSCOLA, STOUT, FONTANA,
TARTAGLIONE, WENGER, ORIE, WOZNIAK, RAFFERTY AND RHOADES,
OCTOBER 26, 2005

REFERRED TO PUBLIC HEALTH AND WELFARE, OCTOBER 26, 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 schedules of controlled substances, for professional
12 prescription administration and dispensing, for prohibited
13 acts and penalties, for prohibitions relating to liquefied
14 ammonia gas, precursors and chemicals and for effect on local
15 ordinances.

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

18 Section 1. Section 4(5) of the act of April 14, 1972
19 (P.L.233, No.64), known as The Controlled Substance, Drug,
20 Device and Cosmetic Act, amended July 3, 1985 (P.L.138, No.39),
21 is amended to read:

22 Section 4. Schedules of Controlled Substances.--The
23 following schedules include the controlled substances listed or
24 to be listed by whatever official name, common or usual name,

1 chemical name, or trade name designated.

2 * * *

3 (5) Schedule V--In determining that a substance comes within
4 this schedule, the secretary shall find: a low potential for
5 abuse relative to the substances listed in Schedule IV;
6 currently accepted medical use in the United States; and limited
7 physical dependence and/or psychological dependence liability
8 relative to the substances listed in Schedule IV. The following
9 controlled substances are included in this schedule:

10 (i) Any compound, mixture, or preparation containing limited
11 quantities of any of the following narcotics or any of their
12 salts, which shall include one or more nonnarcotic active
13 medicinal ingredients in sufficient proportion to confer upon
14 the compound, mixture, or preparation, valuable medicinal
15 qualities other than those possessed by the narcotic alone:

16 1. Not more than 200 milligrams of codeine, or any of its
17 salts, per 100 milliliter or per 100 grams and not more than 10
18 milligrams per dosage unit.

19 2. Not more than 100 milligrams of dihydrocodeine, or any of
20 its salts, per 100 milliliters or per 100 grams and not more
21 than 5 milligrams per dosage unit.

22 3. Not more than 100 milligrams of ethylmorphine, or any of
23 its salts, per 100 milliliters or per 100 grams and not more
24 than 5 milligrams per dosage unit.

25 4. Not more than 2.5 milligrams of diphenoxylate and not
26 less than 25 micrograms of atropine sulfate per dosage unit.

27 5. Not more than 100 milligrams of opium per 100 milliliters
28 or per 100 grams, or not more than 5 milligrams per dosage unit.

29 6. Any detectable quantity of ephedrine, its salts or
30 optical isomers, or salts of optical isomers, except for

1 pediatric products in liquid form that:

2 (A) are labeled pursuant to Federal regulation primarily
3 intended for administration to children under 12 years of age
4 according to label instructions; and

5 (B) according to label instructions do not exceed 15
6 milligrams of ephedrine per 5 milliliters of liquid product.

7 7. Any detectable quantity of pseudoephedrine, its salts or
8 optical isomers, or salts of optical isomers, except for
9 pediatric products in liquid form that:

10 (A) are labeled pursuant to Federal regulation primarily
11 intended for administration to children under 12 years of age
12 according to label instructions; and

13 (B) according to label instructions do not exceed 15
14 milligrams of ephedrine per 5 milliliters of liquid product.

15 (ii) Buprenorphine.

16 Section 2. Section 11(c) of the act is amended to read:

17 Section 11. Professional Prescription, Administration, and
18 Dispensing.--

19 * * *

20 (c) (1) No controlled substance in Schedule V may be
21 distributed or dispensed for other than a medicinal purpose.

22 (2) If a substance described in section 4(5)(i)6 or 7 of
23 this act is dispensed, sold or distributed in a pharmacy:

24 (i) The substance shall be dispensed, sold or distributed
25 only by a licensed pharmacist or a licensed pharmacy technician.

26 (ii) The substance shall not be dispensed, sold or
27 distributed to any person under 18 years of age.

28 (iii) Any person purchasing, receiving or otherwise
29 acquiring the substance shall:

30 (A) Produce a government-issued photo identification showing

1 the date of birth of the person.

2 (B) Sign a written log or receipt showing the date of the
3 transaction, the name of the person and the name and the amount
4 of the substance purchased, received or otherwise acquired.

5 (3) (i) No person shall purchase, receive or otherwise
6 acquire more than 7.5 grams of a substance described in section
7 4(5)(i)6 or 7 of this act within any 30-day period.

8 (ii) No licensed pharmacist or licensed pharmacy technician
9 shall dispense, sell or distribute more than 7.5 grams of the
10 substances described in section 4(5)(i)6 or 7 of this act within
11 any 30-day period.

12 (iii) The limits described in subclauses (i) and (ii) shall
13 not apply to any quantity of the substance dispensed under a
14 valid prescription.

15 (4) The secretary, upon application of a manufacturer of a
16 drug product, may exempt the product from section 4(5)(i)6 and 7
17 of this act if the secretary determines that the product has
18 been formulated in such a way as to effectively prevent the
19 conversion of the active ingredient into methamphetamine.

20 * * *

21 Section 3. Section 13(a) of the act is amended by adding
22 clauses and the section is amended by adding a subsection to
23 read:

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

27 * * *

28 (39) The knowing or intentional dispensing, sale or
29 distribution of a substance in violation of section 11(c).

30 (40) The knowing or intentional entry of false information

1 in the log required under section 11(c)(2)(iii)(B).

2 * * *

3 (q) Any person who violates subsection (a)(39) or (40) shall
4 be guilty of a misdemeanor of the first degree and shall, upon
5 conviction, be sentenced to imprisonment not exceeding five
6 years or to pay a fine not exceeding ten thousand (\$10,000), or
7 both.

8 Section 4. Section 13.1 of the act, added July 15, 2004
9 (P.L.729, No.84), is amended to read:

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

12 (1) Possessing or transporting liquefied ammonia gas:

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

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

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

19 (3) Possessing red phosphorous, hypophosphoric acid,
20 ammonium sulfate, phosphorous, iodine, hydriodic acid,
21 ephedrine, pseudoephedrine, lithium, sodium, potassium,
22 sassafras oil, safrole oil or other oil containing safrole or
23 equivalent, whether in powder or liquid form, with intent to
24 manufacture a controlled substance.

25 (4) Possessing or transporting a substance containing any
26 detectable quantity of ephedrine, its salts or optical isomers,
27 or salts of optical isomers, or any detectable quantity of
28 pseudoephedrine, its salts or optical isomers, or salts of
29 optical of optical isomers, in a vehicle with knowledge or
30 intent it will be used to manufacture a controlled substance.

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

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

9 (d) A person who violates subsection (a)(4) commits a felony
10 of the second degree and shall be sentenced to a term of
11 imprisonment not exceeding ten years or a fine not exceeding
12 twenty-five thousand (\$25,000), or both.

13 Section 5. Section 41.1 of the act, added December 4, 1980
14 (P.L.1093, No.186), is amended to read:

15 Section 41.1. Effect on Local Ordinances.--(a) Nothing in
16 this act relating to drug paraphernalia shall be deemed to
17 supersede or invalidate any consistent local ordinance,
18 including zoning and nuisance ordinances, relating to the
19 possession, sale or use of drug paraphernalia.

20 (b) The provisions of section 11 of this act shall preempt
21 any inconsistent local ordinance, including zoning and nuisance
22 ordinances, relating to the disbursement, sale or distribution
23 of ephedrine or pseudoephedrine.

24 Section 6. This act shall take effect in 60 days.