

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1116 Session of
2006

INTRODUCED BY WONDERLING, MADIGAN, ROBBINS, GORDNER, ARMSTRONG,
PUNT, SCARNATI, BOSCOLA, ORIE, D. WHITE, KASUNIC, RAFFERTY,
COSTA, PILEGGI, RHOADES, PICCOLA AND STACK, MARCH 23, 2006

REFERRED TO PUBLIC HEALTH AND WELFARE, MARCH 23, 2006

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 providing for affirmative
12 defenses, for exception and for reporting.

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 to read:

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

1 * * *

2 (39) The sale at retail of any product containing ephedrine,
3 pseudoephedrine, phenylpropanolamine, or any of their salts,
4 optical isomers or salts of optical isomers unless one of the
5 following applies:

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

8 (ii) The product is offered for sale using any type of
9 antitheft device system, including an electronic antitheft
10 device system that utilizes a product tag and detection alarm
11 which prevents the theft of the product.

12 (40) The delivery, in any single over-the-counter retail
13 sale, of more than three packages, or any number of packages
14 that contain a combined total of more than nine grams of any
15 product containing ephedrine, pseudoephedrine,
16 phenylpropanolamine, or any of their salts, optical isomers or
17 salts of optical isomers. This clause shall not apply to
18 pediatric products labeled pursuant to Federal regulation as
19 being primarily intended for administration to children under
20 twelve years of age or to any compound, mixture or preparation
21 which has been determined by the secretary to be formulated in
22 such a way as to effectively prevent the conversion of the
23 active ingredient into methamphetamine or its salts or optical
24 isomers or salts of optical isomers.

25 * * *

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

30 (1) Upon conviction of the first such offense, he shall be

1 sentenced to imprisonment not exceeding six months, or to pay a
2 fine not exceeding ten thousand dollars (\$10,000), or both.

3 (2) Upon conviction of the second and subsequent offense, he
4 shall be sentenced to imprisonment not exceeding two years, or
5 to pay a fine not exceeding twenty-five thousand dollars
6 (\$25,000), or both.

7 * * *

8 Section 2. The act is amended by adding sections to read:

9 Section 13.3. Affirmative Defenses.--It is an affirmative

10 defense for a retailer who violates section 13(a)(40) that,

11 prior to the date of the alleged violation, the retailer

12 complied with all of the following relating to products

13 containing ephedrine, pseudoephedrine, phenylpropanolamine, or

14 any of their salts, optical isomers or salts of optical isomers:

15 (1) Adopted and implemented a policy relating to the sale of
16 these products and conspicuously posted a notice describing
17 section 13(a)(40).

18 (2) Adopted a disciplinary policy that includes employee
19 counseling and suspension for failure to comply with the
20 provisions of section 13(a)(40).

21 (3) Has implemented the policy adopted under clause (2) with
22 regard to the employee who violated section 13(a)(40).

23 The affirmative defense under this section may be used by a
24 retailer no more than three times at each retail location during
25 any twenty-four (24)-month period.

26 Section 13.4. Exception.--The provisions of section
27 13(a)(39) and (40) shall not apply to any quantity of the
28 substance dispensed under a valid prescription.

29 Section 13.5. Reporting.--(a) A pharmacy, store or other
30 retail mercantile establishment shall promptly communicate to

1 law enforcement a confirmed report or actual knowledge of the
2 theft or loss of thirty (30) or more grams of any drug
3 containing ephedrine, pseudoephedrine, phenylpropanolamine, or
4 any of their salts, optical isomers or salts of optical isomers
5 as an active ingredient.

6 (b) A person who makes a report to law enforcement under
7 this section shall be immune from any civil or criminal
8 liability with respect to the report or its contents if the
9 person has reasonable grounds for suspecting the loss or theft.

10 (c) A violation of subsection (a) constitutes a misdemeanor
11 of the third degree.

12 Section 3. This act shall take effect in 60 days.