

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 381 Session of 2007

INTRODUCED BY J. EVANS, BOYD, CALTAGIRONE, CAPPELLI, COSTA, DeLUCA, DENLINGER, FABRIZIO, GEIST, GOODMAN, HARHAI, HARPER, HERSHEY, HUTCHINSON, KILLION, LEACH, MARSICO, MENSCH, MICOZZIE, MURT, PETRARCA, PICKETT, RAPP, REED, ROAE, SCHRODER, SONNEY, STERN AND YOUNGBLOOD, FEBRUARY 13, 2007

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 13, 2007

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," defining "mobile retail
 11 vendor"; further providing for prohibited acts and penalties;
 12 and providing for reporting, for confidentiality and for
 13 false statements or misrepresentation.

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

16 Section 1. Section 2(b) of the act of April 14, 1972
 17 (P.L.233, No.64), known as The Controlled Substance, Drug,
 18 Device and Cosmetic Act, is amended by adding a definition to
 19 read:

20 Section 2. Definitions.--* * *

21 (b) As used in this act:

22 * * *

1 "Mobile retail vendor" means a person or entity that makes
2 sales at retail from a stand that is intended to be temporary,
3 or is capable of being moved from one location to another,
4 whether the stand is located within or on the premises of a
5 fixed facility, such as a kiosk at a shopping center or airport,
6 or whether the stand is located on unimproved real estate, such
7 as a lot or field leased for retail purposes.

8 * * *

9 Section 2. Section 13(c) of the act, amended December 14,
10 1984 (P.L.988, No.200), is amended and subsection (a) is amended
11 by adding a clause to read:

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

15 * * *

16 (39) The knowing or intentional purchase at retail during a
17 thirty-day period of more than nine (9) grams of ephedrine base,
18 pseudoephedrine base or phenylpropanolamine base in a product or
19 the sale at retail or purchase at retail of any product
20 containing ephedrine, pseudoephedrine, phenylpropanolamine, or
21 any of their salts, optical isomers or salts of optical isomers,
22 except for any quantity of the substances dispensed under a
23 valid prescription and unless all of the following apply:

24 (i) The product does not, for any purchaser, exceed a daily
25 amount of three and six-tenths (3.6) grams of ephedrine base,
26 pseudoephedrine base or phenylpropanolamine base in such
27 product.

28 (ii) The product is offered in a manner that does not
29 provide customers with direct access to the product before the
30 sale is made and is maintained behind the counter. For purposes

1 of this subclause, behind-the-counter maintenance of a product
2 shall include storage of the product in a locked cabinet that is
3 located in an area of the facility to which customers have
4 direct access.

5 (iii) If the seller is a mobile retail vendor:

6 (A) The seller complies with subclause (ii) by placing the
7 product in a locked cabinet.

8 (B) The seller does not sell more than seven and five-tenths
9 (7.5) grams of ephedrine base, pseudoephedrine base or
10 phenylpropanolamine base in such products per customer during a
11 thirty-day period.

12 (iv) The seller delivers the product directly into the
13 custody of the purchaser.

14 (v) The seller maintains a written or electronic logbook of
15 sales that identifies the product by name, the quantity sold,
16 the name and address of the purchaser and the date and time of
17 the sales.

18 (vi) The seller requires the prospective purchaser to
19 present an identification card with a photograph, to sign the
20 logbook and to enter the purchaser's name, address and date and
21 time of sale.

22 (vii) The seller determines that the name entered in the
23 logbook corresponds to the name on the identification presented
24 and that the date and time entered are correct.

25 (viii) The seller enters the name and quantity of the
26 product sold into the logbook.

27 (ix) The seller includes a notice in the logbook that
28 entering false statements or misrepresentations in the logbook
29 may subject the purchaser to criminal penalties.

30 (x) The seller maintains each entry in the logbook for not

1 fewer than two years after the date on which the entry was made.

2 * * *

3 (c) Any person who violates the provisions of clauses (21),
4 (22) [and (24)], (24) and (39) of subsection (a) shall be guilty
5 of a misdemeanor, and shall, on conviction thereof, be punished
6 only as follows:

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

10 (2) Upon conviction of the second and subsequent offense, he
11 shall be sentenced to imprisonment not exceeding two years, or
12 to pay a fine not exceeding twenty-five thousand dollars
13 (\$25,000), or both.

14 * * *

15 Section 3. The act is amended by adding sections to read:

16 Section 13.3. Reporting.--(a) A retailer, including a
17 pharmacy, store or other retail mercantile establishment, shall
18 promptly communicate to law enforcement any confirmed report or
19 actual knowledge of the theft or loss of a product under section
20 13(a)(39) where the quantity with respect to the ephedrine base,
21 pseudoephedrine base or phenylpropanolamine base in the product
22 is thirty (30) grams or more.

23 (b) A person who makes a report to law enforcement under
24 subsection (a) shall be immune from any civil or criminal
25 liability with respect to the report or its contents if the
26 person has reasonable grounds for suspecting the loss or theft.

27 (c) A violation of subsection (a) shall constitute a
28 misdemeanor of the third degree.

29 Section 13.4. Confidentiality.--(a) Except as provided in
30 subsection (b), retailers shall prohibit the accessing, using or

1 sharing of information in a logbook for any purpose other than
2 to ensure compliance with this act or to facilitate a product
3 recall to protect public health and safety.

4 (b) Retailers shall disclose the information in a logbook to
5 law enforcement agencies upon request.

6 Section 13.5. False statements or misrepresentations.--The
7 provision of false statements or misrepresentations by a
8 purchaser to a retailer shall constitute a misdemeanor of the
9 third degree.

10 Section 4. This act shall take effect in 60 days.