

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 125 Session of 2009

INTRODUCED BY GORDNER, ORIE, RAFFERTY, COSTA, BOSCOLA, ALLOWAY, BAKER, EICHELBERGER, ERICKSON, FONTANA, KASUNIC, KITCHEN, LOGAN, ROBBINS, TARTAGLIONE, TOMLINSON, D. WHITE, WOZNIAK, YAW, O'PAKE, WONDERLING AND WASHINGTON, JANUARY 30, 2009

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, JULY 21, 2009

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
12 methamphetamine production, FOR THE OFFENSES OF OPERATING A
13 METHAMPHETAMINE LABORATORY AND ILLEGAL DUMPING OF
14 METHAMPHETAMINE WASTE AND FOR ENVIRONMENTAL COSTS.



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

17 Section 1. Section 13(c) of the act of April 14, 1972 (P.L.
18 233, No.64), known as The Controlled Substance, Drug, Device and
19 Cosmetic Act, amended December 14, 1984 (P.L.988, No.200), is
20 amended and subsection (a) is amended by adding a clause to
21 read:

22 Section 13. Prohibited Acts; Penalties.--(a) The following

1 acts and the causing thereof within the Commonwealth are hereby
2 prohibited:

3 * * *

4 (39) The knowing possession of ephedrine, pseudoephedrine,
5 phenylpropanolamine or a product containing ephedrine,
6 pseudoephedrine, phenylpropanolamine, or any of their salts,
7 optical isomers or salts of optical isomers with the intent to
8 manufacture methamphetamine.

9 * * *

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

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

17 (2) Upon conviction of the second and subsequent offense, he
18 shall be sentenced to imprisonment not exceeding two years, or
19 to pay a fine not exceeding twenty-five thousand dollars
20 (\$25,000), or both.

21 * * *

22 Section 2. The act is amended by adding ~~a section~~ SECTIONS ←
23 to read:

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

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

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

17 SECTION 13.4. OPERATING A METHAMPHETAMINE LABORATORY AND ←
18 ILLEGAL DUMPING OF METHAMPHETAMINE WASTE.--(A) (1) A PERSON
19 COMMITTS THE OFFENSE OF OPERATING A METHAMPHETAMINE LABORATORY IF
20 THE PERSON KNOWINGLY CAUSES A CHEMICAL REACTION INVOLVING
21 EPHEDRINE, PSEUDOEPHEDRINE OR PHENYLPROPANOLAMINE OR ANY OF
22 THEIR SALTS, OPTICAL ISOMERS OR SALTS OF OPTICAL ISOMERS FOR THE
23 PURPOSE OF MANUFACTURING METHAMPHETAMINE OR PREPARING A
24 PRECURSOR SUBSTANCE FOR THE MANUFACTURE OF METHAMPHETAMINE.

25 (2) EXCEPT AS PROVIDED IN CLAUSE (3), AN OFFENSE UNDER THIS
26 SUBSECTION CONSTITUTES A FELONY OF THE SECOND DEGREE AND IS
27 SUBJECT TO 18 PA.C.S. § 1110 (RELATING TO RESTITUTION FOR
28 CLEANUP OF CLANDESTINE LABORATORIES).

29 (3) A PERSON WHO VIOLATES THIS SUBSECTION COMMITS A FELONY
30 OF THE FIRST DEGREE AND IS SUBJECT TO 18 PA.C.S. § 1110 IF THE

1 CHEMICAL REACTION OCCURS WITHIN 1,000 FEET OF THE REAL PROPERTY
2 ON WHICH IS LOCATED A PUBLIC, PRIVATE OR PAROCHIAL SCHOOL, A
3 COLLEGE OR UNIVERSITY OR A NURSERY SCHOOL OR DAY CARE CENTER, OR
4 WITHIN 250 FEET OF THE REAL PROPERTY ON WHICH IS LOCATED A
5 RECREATION CENTER OR PLAYGROUND.

6 (4) THIS SUBSECTION DOES NOT APPLY TO THE MANUFACTURING
7 OPERATION OF A LICENSED PHARMACEUTICAL COMPANY IN THE NORMAL
8 COURSE OF BUSINESS.

9 (B) (1) A PERSON COMMITS A FELONY OF THE THIRD DEGREE IF HE
10 INTENTIONALLY, KNOWINGLY OR RECKLESSLY DEPOSITS, STORES OR
11 DISPOSES ON ANY PROPERTY A PRECURSOR SUBSTANCE, CHEMICAL WASTE
12 OR DEBRIS, USED IN OR RESULTING FROM THE MANUFACTURE OF
13 METHAMPHETAMINE OR THE PREPARATION OF A PRECURSOR SUBSTANCE FOR
14 THE MANUFACTURE OF METHAMPHETAMINE.

15 (2) CLAUSE (1) DOES NOT APPLY TO THE DISPOSAL OF WASTE
16 PRODUCTS:

17 (I) BY A LICENSED PHARMACEUTICAL COMPANY IN THE NORMAL
18 COURSE OF BUSINESS; OR

19 (II) PURSUANT TO FEDERAL OR STATE LAWS REGULATING THE
20 CLEANUP OR DISPOSAL OF WASTE PRODUCTS FROM UNLAWFUL
21 MANUFACTURING OF METHAMPHETAMINE.

22 (C) IN ADDITION TO RESTITUTION UNDER 18 PA.C.S. § 1110, A
23 PERSON WHO IS CONVICTED OF AN OFFENSE UNDER SUBSECTION (A) OR
24 THE USE OF A PRECURSOR SUBSTANCE TO MANUFACTURE METHAMPHETAMINE
25 SHALL BE ORDERED TO REIMBURSE THE APPROPRIATE LAW ENFORCEMENT
26 AGENCY, EMERGENCY MEDICAL SERVICES ORGANIZATION, FIRE COMPANY OR
27 OTHER ORGANIZATION FOR THE COSTS OF CLEANING UP THE
28 ENVIRONMENTAL HAZARDS ASSOCIATED WITH THE OPERATION OF THE
29 LABORATORY OR THE USE OF A PRECURSOR SUBSTANCE TO MANUFACTURE
30 METHAMPHETAMINE.

1 SECTION 13.5. ENVIRONMENTAL COSTS.--IN ADDITION TO
2 RESTITUTION UNDER 18 PA.C.S. § 1110 (RELATING TO RESTITUTION FOR
3 CLEANUP OF CLANDESTINE LABORATORIES), A PERSON WHO IS CONVICTED
4 OF AN OFFENSE INVOLVING THE OPERATION OF A METHAMPHETAMINE
5 LABORATORY OR THE USE OF A PRECURSOR SUBSTANCE TO MANUFACTURE
6 METHAMPHETAMINE SHALL BE ORDERED TO REIMBURSE THE APPROPRIATE
7 LAW ENFORCEMENT AGENCY, EMERGENCY MEDICAL SERVICES ORGANIZATION,
8 FIRE COMPANY OR OTHER ORGANIZATION FOR THE COSTS OF CLEANING UP
9 THE ENVIRONMENTAL HAZARDS ASSOCIATED WITH THE OPERATION OF THE
10 LABORATORY OR THE USE OF A PRECURSOR SUBSTANCE TO MANUFACTURE
11 METHAMPHETAMINE.

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