

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2480 Session of 2012

INTRODUCED BY QUINN, BAKER, DIGIROLAMO, WATSON, CALTAGIRONE, COHEN, D. COSTA, P. COSTA, DeLUCA, GILLESPIE, GROVE, HORNAMAN, M. K. KELLER, KILLION, MALONEY, MANN, MICCARELLI, MILLARD, MILNE, MURT, PICKETT, ROSS, K. SMITH, STERN, SWANGER, RAPP, MILLER, HARPER AND GINGRICH, JUNE 19, 2012

REFERRED TO COMMITTEE ON HEALTH, JUNE 19, 2012

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 ephedrine
 12 and pseudoephedrine and electronic tracking.

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

15 Section 1. Section 13(a)(40) and (c) of the act of April 14,
 16 1972 (P.L.233, No.64), known as The Controlled Substance, Drug,
 17 Device and Cosmetic Act, amended or added November 23, 2010
 18 (P.L.1081, No.107), are amended to read:

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

1 * * *

2 (40) [The sale at retail of any product containing
3 ephedrine, pseudoephedrine, phenylpropanolamine, or any of their
4 salts, optical isomers or salts of optical isomers as the sole
5 active ingredient unless one of the 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 within a locked cabinet
9 that is located in an area of the facility involved to which
10 customers do have direct access.] (Reserved).

11 * * *

12 (c) Any person who violates the provisions of clauses (21),
13 (22), (24) [, (39) and (40)] and (39) of subsection (a) shall be
14 guilty of a misdemeanor, and shall, on conviction thereof, be
15 punished only as follows:

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

19 (2) Upon conviction of the second and subsequent offense, he
20 shall be sentenced to imprisonment not exceeding two years, or
21 to pay a fine not exceeding twenty-five thousand dollars
22 (\$25,000), or both.

23 * * *

24 Section 2. The act is amended by adding a section to read:

25 Section 13.6. Ephedrine and Pseudoephedrine; Electronic
26 Tracking.--(a) Retailers shall be limited from sales and an
27 individual shall be limited from purchases of ephedrine or
28 pseudoephedrine base, or their salts, isomers or salts of
29 isomers in the following amounts:

30 (1) 3.6 grams of ephedrine or pseudoephedrine base contained

1 in a product or combination of products per day.

2 (2) 9 grams of ephedrine or pseudoephedrine base contained
3 in a product or combination of products per thirty-day period.

4 (b) Nonprescription products containing ephedrine or
5 pseudoephedrine shall be maintained behind the counter or in a
6 locked case where the customer does not have direct access.

7 (c) A retailer shall require any person purchasing a
8 nonprescription product that contains ephedrine or
9 pseudoephedrine to present a valid government-issued photo
10 identification at the point of sale. The retailer shall record
11 the following:

12 (1) Name and address of the purchaser.

13 (2) Name and quantity of product purchased.

14 (3) Date and time of purchase.

15 (4) Purchaser identification type and number, such as
16 driver's license state and number, and require the purchaser's
17 signature in a logbook.

18 (d) A retailer shall, before completing a sale under this
19 section, electronically submit the required information to the
20 National Precursor Log Exchange (NPLEx) administered by the
21 National Association of Drug Diversion Investigators (NADDI).
22 Absent wantonness, recklessness or deliberate misconduct, any
23 retailer using the electronic sales tracking system in
24 accordance with this subsection shall not be civilly liable as a
25 result of any act or omission in carrying out the duties
26 required by this subsection and shall be immune from liability
27 to any third party unless the retailer has violated any
28 provision of this subsection in relation to a claim brought for
29 such violation.

30 (e) If a retailer selling a nonprescription product

1 containing ephedrine or pseudoephedrine experiences mechanical
2 or electronic failure of the electronic sales tracking system
3 and is unable to comply with the electronic sales tracking
4 requirement, the retailer shall maintain a written log or an
5 alternative electronic recordkeeping mechanism until such time
6 as the retailer is able to comply with the electronic sales
7 tracking requirement.

8 (f) NADDI shall forward State transaction records in the
9 NPLEx to the department weekly and provide real-time access to
10 the NPLEx information through the NPLEx online portal to law
11 enforcement in this Commonwealth as authorized by the
12 department.

13 (g) NPLEx shall be capable of generating a stop sale alert,
14 which shall be a notification that completion of the sale would
15 result in the seller or purchaser violating the quantity limits
16 set forth in this section. The seller shall not complete the
17 sale if the electronic system generates a stop sale alert. The
18 system shall contain an override function that may be used by a
19 retailer of ephedrine or pseudoephedrine who has a reasonable
20 fear of imminent bodily harm if it does not complete a sale.
21 Each instance in which the override function is used shall be
22 logged by the system.

23 (h) A violation of any provision of this section is a
24 misdemeanor, punishable by fine only.

25 (i) This section does not apply to a person who obtains the
26 product pursuant to a valid prescription.

27 (j) This section shall supersede any other laws or
28 regulations governing the sales of products containing ephedrine
29 or pseudoephedrine.

30 (k) If a retailer that sells a nonprescription product

1 containing pseudoephedrine or ephedrine experiences mechanical
2 or electronic failure of the electronic sales tracking system
3 and is unable to comply with the electronic sales tracking
4 requirements of this section, the retailer must maintain a
5 written log or an alternative electronic recordkeeping mechanism
6 until the retailer is able to comply with the electronic
7 tracking system requirements. A retailer that does not have
8 Internet access to the electronic sales tracking system is
9 compliant with the requirements of this section if the retailer
10 maintains a written log or an alternative electronic
11 recordkeeping mechanism.

12 Section 3. This act shall take effect in 180 days.