

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, GINGRICH, GEIST, WATERS, NEILSON, MICOZZIE AND FARRY, JUNE 19, 2012

AS REPORTED FROM COMMITTEE ON HEALTH, HOUSE OF REPRESENTATIVES, AS AMENDED, SEPTEMBER 25, 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 DEFINITIONS AND FOR prohibited acts and penalties; and ←
12 providing for ephedrine and pseudoephedrine and electronic
13 tracking.

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

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

20 SECTION 1. SECTION 2(B) OF THE ACT OF APRIL 14, 1972 ←
21 (P.L.233, NO.64), KNOWN AS THE CONTROLLED SUBSTANCE, DRUG,

1 DEVICE AND COSMETIC ACT, IS AMENDED BY ADDING DEFINITIONS TO  
2 READ:

3 SECTION 2. DEFINITIONS.--\* \* \*

4 (B) AS USED IN THIS ACT:

5 \* \* \*

6 "NATIONAL ASSOCIATION OF DRUG DIVERSION INVESTIGATORS  
7 (NADDI)" MEANS A NONPROFIT ORGANIZATION THAT FACILITATES  
8 COOPERATION BETWEEN LAW ENFORCEMENT, HEALTH CARE PROFESSIONALS,  
9 STATE REGULATORY AGENCIES AND PHARMACEUTICAL MANUFACTURERS IN  
10 THE PREVENTION AND INVESTIGATION OF PRESCRIPTION DRUG DIVERSION.

11 "NATIONAL PRECURSOR LOG EXCHANGE (NPLEX)" MEANS A REAL-TIME  
12 ELECTRONIC LOGGING SYSTEM USED BY PHARMACIES AND LAW ENFORCEMENT  
13 TO TRACK SALES OF OVER-THE-COUNTER (OTC) COLD AND ALLERGY  
14 MEDICATIONS CONTAINING PRECURSORS TO METHAMPHETAMINE.

15 \* \* \*

16 SECTION 2. SECTION 13(A)(40) AND (C) OF THE ACT, AMENDED OR  
17 ADDED NOVEMBER 23, 2010 (P.L.1081, NO.107), ARE AMENDED TO READ:

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

21 \* \* \*

22 (40) [The sale at retail of any product containing  
23 ephedrine, pseudoephedrine, phenylpropanolamine, or any of their  
24 salts, optical isomers or salts of optical isomers as the sole  
25 active ingredient unless one of the following applies:

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

28 (ii) The product is offered for sale within a locked cabinet  
29 that is located in an area of the facility involved to which  
30 customers do have direct access.] (Reserved).

1 \* \* \*

2 (c) Any person who violates the provisions of clauses (21),  
3 (22), (24) [, (39) and (40)] and (39) of subsection (a) shall be  
4 guilty of a misdemeanor, and shall, on conviction thereof, be  
5 punished only as follows:

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

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

13 \* \* \*

14 Section 2 3. The act is amended by adding a section to read: ←

15 Section 13.6. Ephedrine and Pseudoephedrine; Electronic  
16 Tracking.--(a) Retailers shall be limited from sales and an  
17 individual shall be limited from purchases of ephedrine or  
18 pseudoephedrine base, or their salts, isomers or salts of  
19 isomers in the following amounts:

20 (1) 3.6 grams of ephedrine or pseudoephedrine base contained  
21 in a product or combination of products per day.

22 (2) 9 grams of ephedrine or pseudoephedrine base contained  
23 in a product or combination of products per thirty-day period.

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

27 (c) A retailer shall require any person purchasing a  
28 nonprescription product that contains ephedrine or  
29 pseudoephedrine to present a valid government-issued photo  
30 identification at the point of sale. The retailer shall record

1 the following:

2 (1) Name and address of the purchaser.

3 (2) Name and quantity of product purchased.

4 (3) Date and time of purchase.

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

8 (d) A retailer shall, before completing a sale under this  
9 section, electronically submit the required information to the  
10 National Precursor Log Exchange (NPLEx) administered by the  
11 National Association of Drug Diversion Investigators (NADDI).  
12 Absent wantonness, recklessness or deliberate misconduct, any  
13 retailer using the electronic sales tracking system in  
14 accordance with this subsection shall not be civilly liable as a  
15 result of any act or omission in carrying out the duties  
16 required by this subsection and shall be immune from liability  
17 to any third party unless the retailer has violated any  
18 provision of this subsection in relation to a claim brought for  
19 such violation.

20 (e) If a retailer selling a nonprescription product  
21 containing ephedrine or pseudoephedrine experiences mechanical  
22 or electronic failure of the electronic sales tracking system  
23 and is unable to comply with the electronic sales tracking  
24 requirement, the retailer shall maintain a written log or an  
25 alternative electronic recordkeeping mechanism until such time  
26 as the retailer is able to comply with the electronic sales  
27 tracking requirement. A RETAILER THAT DOES NOT HAVE INTERNET  
28 ACCESS TO THE ELECTRONIC SALES TRACKING SYSTEM IS COMPLIANT WITH  
29 THE REQUIREMENTS OF THIS SECTION IF THE RETAILER MAINTAINS A  
30 WRITTEN LOG OR AN ALTERNATIVE RECORDKEEPING MECHANISM.



1 (f) NADDI shall forward State transaction records in the  
2 NPLEx to the department weekly and provide real-time access to  
3 the NPLEx information through the NPLEx online portal to law  
4 enforcement in this Commonwealth as authorized by the  
5 department.

6 (g) THE DEPARTMENT SHALL WORK WITH NADDI TO ENSURE THAT ←  
7 NPLEx shall be capable of generating a stop sale alert, which  
8 shall be a notification that completion of the sale would result  
9 in the seller or purchaser violating the quantity limits set  
10 forth in this section. The seller shall not complete the sale if  
11 the electronic system generates a stop sale alert. The  
12 DEPARTMENT SHALL WORK WITH NADDI TO ENSURE THAT THE system shall ←  
13 contain CONTAINS an override function that may be used by a ←  
14 retailer of ephedrine or pseudoephedrine who has a reasonable  
15 fear of imminent bodily harm if it does not complete a sale.  
16 Each instance in which the override function is used shall be  
17 logged by the system.

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

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

22 (j) This section shall supersede any other laws or  
23 regulations governing the sales of products containing ephedrine  
24 or pseudoephedrine.

25 ~~(k) If a retailer that sells a nonprescription product~~ ←  
26 ~~containing pseudoephedrine or ephedrine experiences mechanical~~  
27 ~~or electronic failure of the electronic sales tracking system~~  
28 ~~and is unable to comply with the electronic sales tracking~~  
29 ~~requirements of this section, the retailer must maintain a~~  
30 ~~written log or an alternative electronic recordkeeping mechanism~~

1 ~~until the retailer is able to comply with the electronic~~  
2 ~~tracking system requirements. A retailer that does not have~~  
3 ~~Internet access to the electronic sales tracking system is~~  
4 ~~compliant with the requirements of this section if the retailer~~  
5 ~~maintains a written log or an alternative electronic~~  
6 ~~recordkeeping mechanism.~~

7 Section 3 4. This act shall take effect in 180 days.

