

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL**No. 2480** Session of
2012

INTRODUCED BY QUINN, BAKER, DIGIROLAMO, WATSON, CALTAGIRONE,
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SWANGER, RAPP, MILLER, HARPER, GINGRICH, GEIST, WATERS,
NEILSON, MICOZZIE AND FARRY, JUNE 19, 2012

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
OCTOBER 2, 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 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 definitions to
19 read:

20 Section 2. Definitions.--* * *

21 (b) As used in this act:

1 * * *

2 "National Association of Drug Diversion Investigators
3 (NADDI)" means a nonprofit organization that facilitates
4 cooperation between law enforcement, health care professionals,
5 state regulatory agencies and pharmaceutical manufacturers in
6 the prevention and investigation of prescription drug diversion.

7 "National Precursor Log Exchange (NPLEx)" means a real-time
8 electronic logging system used by pharmacies and law enforcement
9 to track sales of over-the-counter (OTC) cold and allergy
10 medications containing precursors to methamphetamine.

11 * * *

12 Section 2. Section 13(a)(40) and (c) of the act, amended or
13 added November 23, 2010 (P.L.1081, No.107), are amended to read:

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

17 * * *

18 (40) [The sale at retail of any product containing
19 ephedrine, pseudoephedrine, phenylpropanolamine, or any of their
20 salts, optical isomers or salts of optical isomers as the sole
21 active ingredient unless one of the following applies:

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

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

27 * * *

28 (c) Any person who violates the provisions of clauses (21),
29 (22), (24) [, (39) and (40)] and (39) of subsection (a) shall be
30 guilty of a misdemeanor, and shall, on conviction thereof, be

1 punished only as follows:

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

5 (2) Upon conviction of the second and subsequent offense, he
6 shall be sentenced to imprisonment not exceeding two years, or
7 to pay a fine not exceeding twenty-five thousand dollars
8 (\$25,000), or both.

9 * * *

10 Section 3. The act is amended by adding a section to read:

11 Section 13.6. Ephedrine and Pseudoephedrine; Electronic

12 Tracking.--(a) Retailers shall be ~~limited from sales~~ PROHIBITED ←

13 FROM MAKING SALES TO AN INDIVIDUAL OF, and an individual shall

14 be ~~limited from purchases of~~ PROHIBITED FROM PURCHASING, ←

15 ephedrine or pseudoephedrine base, or their salts, isomers or

16 salts of isomers in EXCESS OF the following amounts: ←

17 (1) 3.6 grams of ephedrine or pseudoephedrine base contained
18 in a product or combination of products per day.

19 (2) 9 grams of ephedrine or pseudoephedrine base contained
20 in a product or combination of products per thirty-day period.

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

24 (c) A retailer shall require any person purchasing a
25 nonprescription product that contains ephedrine or
26 pseudoephedrine to present a valid government-issued photo
27 identification, OR OTHER DOCUMENT CONSIDERED ACCEPTABLE UNDER ←
28 FEDERAL LAW FOR THIS PURPOSE, at the point of sale. The retailer
29 shall record the following:

30 (1) Name and address of the purchaser.

1 (2) Name and quantity of product purchased.
2 (3) Date and time of purchase.
3 (4) Purchaser identification type and number, such as
4 driver's license state and number, and require the purchaser's
5 signature in a logbook.

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

18 (e) If a retailer selling a nonprescription product
19 containing ephedrine or pseudoephedrine experiences mechanical
20 or electronic failure of the electronic sales tracking system
21 and is unable to comply with the electronic sales tracking
22 requirement, the retailer shall maintain a written log or an
23 alternative electronic recordkeeping mechanism until such time
24 as the retailer is able to comply with the electronic sales
25 tracking requirement. A retailer that does not have Internet
26 access to the electronic sales tracking system is compliant with
27 the requirements of this section if the retailer maintains a
28 written log or an alternative recordkeeping mechanism.

29 (f) NADDI shall forward State transaction records in the
30 NPLEx to the department weekly and provide real-time access to

1 the NPLEEx information through the NPLEEx online portal to law
2 enforcement in this Commonwealth as authorized by the
3 department.

4 (g) The department shall work with NADDI to ensure that
5 NPLEEx shall be capable of generating a stop sale alert, which
6 shall be a notification that completion of the sale would result
7 in the seller or purchaser violating the quantity limits set
8 forth in this section. The seller shall not complete the sale if
9 the electronic system generates a stop sale alert. The
10 department shall work with NADDI to ensure that the system
11 contains an override function that may be used by a retailer of
12 ephedrine or pseudoephedrine who has a reasonable fear of
13 imminent bodily harm if it does not complete a sale. Each
14 instance in which the override function is used shall be logged
15 by the system.

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

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

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

23 Section 4. This act shall take effect in ~~180~~ 270 days. ←