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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 602 Session of  
2013

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INTRODUCED BY QUINN, MICOZZIE, SCHLOSSBERG, HICKERNELL, BAKER,  
STEPHENS, M. K. KELLER, D. COSTA, MILLARD, MAJOR, KORTZ, C.  
HARRIS, STURLA, MILLER, PICKETT, COHEN, READSHAW, SWANGER,  
PETRI, V. BROWN, GROVE, WATSON, FARRY, MURT AND MOUL,  
FEBRUARY 8, 2013

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REFERRED TO COMMITTEE ON HEALTH, FEBRUARY 8, 2013

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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:

22 \* \* \*

1 "Real-time stop sale system" means a system intended to be  
2 used by law enforcement agencies and pharmacies or other  
3 business establishments that:

4 (1) is installed, operated and maintained free of any one-  
5 time or recurring charge to the business establishment or to the  
6 Commonwealth;

7 (2) is able to communicate in real time with similar systems  
8 operated in other states and similar systems containing  
9 information submitted by more than one state;

10 (3) complies with the security policy of the Criminal  
11 Justice Information Services Division of the Federal Bureau of  
12 Investigation;

13 (4) complies with information exchange standards adopted by  
14 the National Information Exchange Model;

15 (5) uses a mechanism to prevent the completion of a sale of  
16 a product containing ephedrine, pseudoephedrine or  
17 norpseudoephedrine that would violate Federal or State law  
18 regarding the purchase of a product containing those substances;  
19 and

20 (6) is equipped with an override of the mechanism that:

21 (i) may be activated by an employe of a business  
22 establishment; and

23 (ii) creates a record of each activation of the override.

24 \* \* \*

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

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

30 \* \* \*

1 (40) [The sale at retail of any product containing  
2 ephedrine, pseudoephedrine, phenylpropanolamine, or any of their  
3 salts, optical isomers or salts of optical isomers as the sole  
4 active ingredient unless one of the following applies:

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

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

10 \* \* \*

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

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

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

22 \* \* \*

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

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

29 (1) 3.6 grams of ephedrine or pseudoephedrine base contained  
30 in a product or combination of products per day.

1 (2) 9 grams of ephedrine or pseudoephedrine base contained  
2 in a product or combination of products per thirty-day period.

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

6 (c) A retailer shall require any person purchasing a  
7 nonprescription product that contains ephedrine or  
8 pseudoephedrine to present a valid government-issued photo  
9 identification, or other document considered acceptable under  
10 Federal law for this purpose, at the point of sale. The retailer  
11 shall record 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) Beginning January 1, 2014, a retailer shall, before  
19 completing a sale under this section, electronically submit the  
20 required information to the real-time stop sale system  
21 administered by the department, provided that the system is  
22 available without a charge to retailers for access. Absent  
23 negligence, wantonness, recklessness or deliberate misconduct,  
24 any retailer using the electronic sales tracking system in  
25 accordance with this subsection shall not be civilly liable as a  
26 result of any act or omission in carrying out the duties  
27 required by this subsection and shall be immune from liability  
28 to any third party unless the retailer has violated any  
29 provision of this subsection in relation to a claim brought for  
30 such violation.

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

12 (f) The vendor of the real-time stop sale system shall  
13 forward State transaction records in the real-time stop sale  
14 system to the department weekly and provide real-time access to  
15 the real-time stop sale system information through the system's  
16 online portal to law enforcement in this Commonwealth as  
17 authorized by the department.

18 (g) The department shall work with the real-time stop sale  
19 system to ensure that the real-time stop sale system shall be  
20 capable of generating a stop sale alert, which shall be a  
21 notification that completion of the sale would result in the  
22 seller or purchaser violating the quantity limits set forth in  
23 this section. The seller shall not complete the sale if the  
24 electronic system generates a stop sale alert. The department  
25 shall work with the real-time stop sale system to ensure that  
26 the system contains an override function that may be used by a  
27 retailer of ephedrine or pseudoephedrine who has a reasonable  
28 fear of imminent bodily harm if it does not complete a sale.  
29 Each instance in which the override function is used shall be  
30 logged by the system.

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

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

5     (j) This section shall supersede any other laws or  
6 regulations governing the sales of products containing ephedrine  
7 or pseudoephedrine.

8     Section 4. This act shall take effect in 270 days.