

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 608 Session of 2015

INTRODUCED BY BAKER, COHEN, MILLARD, THOMAS, CORBIN, PICKETT,
D. COSTA, M. K. KELLER, V. BROWN, A. HARRIS, READSHAW, MAJOR,
MURT, DeLUCA, GINGRICH, BOBACK, GIBBONS, KORTZ, PASHINSKI,
EVERETT, KNOWLES, HARHART, REGAN AND MOUL, FEBRUARY 24, 2015

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 24, 2015

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 authority to control, for liquefied ammonia gas, precursors
12 and chemicals and for promulgation of regulations.

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

15 Section 1. Section 3(c) of the act of April 14, 1972
16 (P.L.233, No.64), known as The Controlled Substance, Drug,
17 Device and Cosmetic Act, is amended and the section is amended
18 by adding subsections to read:

19 Section 3. Authority to Control.--

20 * * *

21 (c) [The secretary shall not remove any substance from
22 control under this act unless specifically authorized by the

1 General Assembly to do so. The secretary shall not reschedule
2 any controlled substance unless specifically authorized by the
3 board to do so.] Notwithstanding subsection (a), if the
4 secretary finds that the health and safety of the public will
5 not be adversely affected, the secretary may:

6 (1) Reschedule any controlled substance to coincide with
7 Federal law, including the Controlled Substances Act (Public Law
8 91-513, 84 Stat. 1236, 21 U.S.C. § 801 et seq.), regulations
9 promulgated under 21 CFR Ch. 2 (relating to drug enforcement
10 administration, department of justice) or any Federal judicial
11 order. The secretary shall publish a notice in the Pennsylvania
12 Bulletin of the rescheduling of a controlled substance under
13 this clause. The rescheduling of the controlled substance to a
14 higher schedule may not take effect earlier than thirty days
15 after publication of the notice in the Pennsylvania Bulletin.
16 The rescheduling of a controlled substance to a lower schedule
17 may take effect upon publication in the Pennsylvania Bulletin.

18 (2) Exclude any substance or remove any controlled substance
19 from any schedule, provided that the substance or controlled
20 substance has been approved for over-the-counter use without a
21 prescription under Federal law, including the Federal Food, Drug
22 and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301, et seq.),
23 regulations promulgated under 21 CFR Ch. 1 (relating to food and
24 drug administration, department of health and human services) or
25 any Federal judicial order.

26 (d) If the secretary finds that the scheduling of a
27 substance on a temporary basis is necessary to avoid an imminent
28 hazard to public safety, the secretary may, by publishing a
29 final notice in the Pennsylvania Bulletin and without regard to
30 the requirements of subsection (a), schedule a substance under

1 one of the schedules in section 4 if the substance is not listed
2 in any other schedule in section 4 or 28 Pa. Code §§ 25.72
3 (relating to schedules of controlled substances) and 25.75
4 (relating to paregoric) and if no exception or approval is in
5 effect for the substance under section 505 of the Federal Food,
6 Drug and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 355). The
7 following apply:

8 (1) A final order may not be issued before the expiration of
9 fourteen days after both:

10 (i) The date of publication in the Pennsylvania Bulletin of
11 a proposed notice of the intention to issue a final notice and
12 the grounds upon which the order is to be issued.

13 (ii) The date the secretary transmitted the notice to the
14 Attorney General as required by clause (4).

15 (2) The scheduling of a substance under this subsection
16 shall expire at the end of one year from the date of publication
17 of the final notice scheduling of the substance except that the
18 secretary may, during the pendency of proceedings under
19 subsection (a) with respect to the substance, extend the
20 temporary scheduling for up to one additional year by publishing
21 a subsequent notice in the Pennsylvania Bulletin prior to the
22 expiration of the initial notice.

23 (3) When issuing a proposed notice under clause (1), the
24 secretary shall be required to consider, with respect to the
25 finding of an imminent hazard to public safety, only those
26 factors set forth in subsection (a) (4), (5), (6) and (8), except
27 that, if clause (8) has been met regarding the temporary or
28 permanent scheduling of a specific substance under Federal law,
29 the secretary shall be authorized to temporarily schedule the
30 substance without regard to clauses (4), (5) and (6).

1 (4) The secretary shall transmit the proposed notice issued
2 under clause (1) to the Attorney General. The Attorney General
3 shall have thirty days from receipt of the proposed notice to
4 provide written comments, if any, on relevant issues, including
5 actual abuse, diversion from legitimate channels and clandestine
6 importation, manufacture or distribution. In issuing a final
7 notice under this subsection, the secretary shall take into
8 consideration any comments submitted by the Attorney General.

9 (5) (i) Except as provided in subclause (ii), during the
10 time period that a substance is temporarily scheduled, the
11 secretary shall proceed with the permanent scheduling of the
12 substance pursuant to the requirements under subsection (a).

13 (ii) If a substance has been temporarily scheduled and the
14 secretary proceeds with permanent scheduling, the secretary
15 shall only be required to proceed under section 5(a) of the act
16 of June 25, 1982 (P.L.633, No.181), known as the "Regulatory
17 Review Act," by submitting final omitted regulations.

18 (iii) A final notice issued under clause (1) with respect to
19 a substance shall be vacated upon the conclusion of a subsequent
20 rulemaking proceeding initiated under subsection (a) with
21 respect to the substance or the enactment of law by the General
22 Assembly permanently scheduling the substance.

23 (iv) While the substance is temporarily scheduled, if the
24 secretary determines that a substance should not be permanently
25 scheduled, and no law has been enacted by the General Assembly
26 to permanently schedule the substance, the secretary shall
27 publish a notice in the Pennsylvania Bulletin with a rationale
28 as to why the substance is not being permanently scheduled. Upon
29 publication of the notice, the substance shall no longer be
30 considered a controlled substance. Withdrawal of a temporarily

1 scheduled substance under this subclause shall not affect any
2 criminal proceeding or civil action initiated based on the
3 temporary scheduling.

4 (6) Temporary scheduling of a substance by the secretary
5 under this subsection shall not be subject to section 612 of the
6 act of April 9, 1929 (P.L.177, No.175), known as "The
7 Administrative Code of 1929," the act of July 31, 1968 (P.L.769,
8 No.240), referred to as the Commonwealth Documents Law, the act
9 of October 15, 1980 (P.L.950, No.164), known as the
10 "Commonwealth Attorneys Act," or the "Regulatory Review Act."

11 (7) A proposed or final notice issued by the secretary under
12 this subsection shall not be subject to judicial review.

13 (e) As used in this section, the term "substance" shall
14 include any group of substances, material, mixture, compound,
15 salts, isomers, salts of isomers, analogs, homologues or
16 homologous series.

17 Section 2. Section 13.1 of the act, amended June 24, 2013
18 (P.L.147, No.26), is amended to read:

19 Section 13.1. Liquefied Ammonia Gas; Precursors and
20 Chemicals.--(a) The following acts are prohibited:

21 (1) Possessing or transporting liquefied ammonia gas:

22 (i) for any purpose other than legitimate agricultural or
23 industrial use; or

24 (ii) in a container not approved by the Department of
25 Agriculture or the Department of Transportation or both.

26 (2) Possessing or transporting liquefied ammonia gas with
27 intent to unlawfully manufacture a controlled substance.

28 (3) Possessing [red phosphorous, hypophosphoric acid,
29 ammonium sulfate, phosphorous, iodine, hydriodic acid,
30 ephedrine, pseudoephedrine, lithium, sodium, potassium,

1 sassafras oil, safrole oil or other oil containing safrole or
2 equivalent, whether in powder or liquid form,]
3 phenylpropanolamine, phenyl acetone, methylamine, ammonium
4 sulfate, ammonium nitrate [or], phenyl acetic acid or a
5 precursor substance with intent to unlawfully manufacture a
6 controlled substance.

7 (4) Possessing the esters, salts, optical isomers or salts
8 of optical isomers of any of the substances under clause (3)
9 with intent to manufacture a controlled substance.

10 (b) A person who violates subsection (a)(1) commits a
11 misdemeanor and upon conviction shall be sentenced to
12 imprisonment not exceeding five years and to pay a fine not
13 exceeding ten thousand dollars (\$10,000).

14 (c) A person who violates subsection (a)(2), (3) or (4)
15 commits a felony and upon conviction shall be sentenced to
16 imprisonment not exceeding seven years and to pay a fine not
17 exceeding fifteen thousand dollars (\$15,000).

18 (d) As used in this section, the term "precursor substance"
19 means:

20 (1) red phosphorous, hypophosphoric acid, ammonium sulfate,
21 phosphorous, iodine, hydriodic acid or ephedrine,
22 pseudoephedrine, phenylpropanolamine or any of their salts or
23 optical isomers;

24 (2) salts of optical isomers or lithium, sodium, potassium,
25 sassafras oil or safrole oil or other oil containing safrole or
26 equivalent, whether in powder or liquid form; and

27 (3) any chemical in a regulation promulgated by the
28 secretary under section 35(b).

29 Section 3. Section 35 of the act is amended to read:

30 Section 35. Promulgation of Regulations.--(a) The secretary

1 shall have the authority to promulgate in accordance with the
2 provisions of this section and of the act of July 31, 1968
3 (P.L.769, No. 240), known as the "Commonwealth Documents Law"
4 any regulations hereinbefore referred to in this act and such
5 other regulations with the consent of the board regarding the
6 possession, distribution, sale, purchase or manufacture of
7 controlled substances, other drugs or devices or cosmetics as
8 may be necessary to aid in the enforcement of this act.

9 (b) The following apply to a regulation adding a chemical to
10 the definition of "precursor substance" in section 13.1(d):

11 (1) The secretary may promulgate the regulation:

12 (i) as part of the administration of this act; or

13 (ii) in response to a petition of an interested party.

14 (2) In determining whether to add a chemical, the secretary
15 shall consider all of the following:

16 (i) Whether the chemical is already a controlled substance.

17 (ii) The availability of the chemical for potential illegal
18 diversion.

19 (iii) The historical, actual or potential use of the
20 chemical in the illegal production of a controlled substance,
21 including the scope, duration and significance of use.

22 (iv) The nature and extent of the legitimate uses of the
23 chemical.

24 (v) The clandestine and legitimate importation, manufacture
25 or distribution of the chemical.

26 (vi) Any other factors relevant to and consistent with
27 public health and safety.

28 (3) Promulgation of the regulation is exempt from section
29 612 of the act of April 9, 1929 (P.L.177, No.175), known as "The
30 Administrative Code of 1929" and the act of June 25, 1982

1 (P.L.633, No.181), known as the "Regulatory Review Act."

2 Section 4. This act shall take effect in 60 days.