

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 602 Session of
2013

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

SENATOR VANCE, PUBLIC HEALTH AND WELFARE, IN SENATE, AS AMENDED,
JUNE 12, 2013

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

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

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

11 (3) complies with the security policy of the Criminal
12 Justice Information Services Division of the Federal Bureau of
13 Investigation OR ITS SUCCESSOR; <--

14 (4) complies with information exchange standards adopted by
15 the National Information Exchange Model OR ITS SUCCESSOR; <--

16 (5) uses a mechanism to prevent the completion of a sale of
17 a product containing ephedrine~~7~~ OR pseudoephedrine ~~or~~ <--
18 ~~nor~~pseudoephedrine that would violate Federal or State law
19 regarding the purchase of a product containing those substances;

20 and

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

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

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

25 * * *

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

28 Section 13. Prohibited Acts; Penalties.--(a) The following
29 acts and the causing thereof within the Commonwealth are hereby
30 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 3. The act is amended by adding a section to read:

25 Section 13.6. Ephedrine and Pseudoephedrine; Electronic
26 Tracking.--(a) Retailers shall be prohibited from making sales
27 to an individual of, and an individual shall be prohibited from
28 purchasing, ephedrine or pseudoephedrine base, or their salts,
29 isomers or salts of isomers in excess of 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, or other document considered acceptable under
11 Federal law for this purpose, at the point of sale. The retailer
12 shall record the following:

13 (1) Name and address of the purchaser.

14 (2) Name and quantity of product purchased.

15 (3) Date and time of purchase.

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

19 (d) A retailer shall, before completing a sale under this
20 section, electronically submit the required information to the
21 real-time stop sale system administered by the department,
22 provided that the system is available without a charge to FOR <--
23 retailers for TO access. Absent negligence, wantonness, <--
24 recklessness or deliberate misconduct, any retailer using the
25 electronic sales tracking system in accordance with this
26 subsection shall not be civilly liable as a result of any act or
27 omission in carrying out the duties required by this subsection
28 and shall be immune from liability to any third party unless the
29 retailer has violated any provision of this subsection in
30 relation to a claim brought for 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 ~~VENDOR~~ to ensure that the real-time stop sale system <--
20 shall be capable of generating a stop sale alert, which shall be
21 a notification that completion of the sale would result in the
22 seller ~~RETAILER~~ or purchaser violating the quantity limits set <--
23 forth in this section. The seller ~~RETAILER~~ shall not complete <--
24 the sale if the electronic system generates a stop sale alert.
25 The department shall work with the real-time stop sale system <--
26 VENDOR ~~to ensure that the system contains an override function~~ <--
27 that may be used by a retailer of ephedrine or pseudoephedrine
28 who has a reasonable fear of imminent bodily harm if it does not
29 complete a sale. Each instance in which the override function is
30 used shall be logged ~~by~~ IN 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.