

No. 2013-53

AN ACT

HB 602

Amending the act of April 14, 1972 (P.L.233, No.64), entitled "An act relating to the manufacture, sale and possession of controlled substances, other drugs, devices and cosmetics; conferring powers on the courts and the secretary and Department of Health, and a newly created Pennsylvania Drug, Device and Cosmetic Board; establishing schedules of controlled substances; providing penalties; requiring registration of persons engaged in the drug trade and for the revocation or suspension of certain licenses and registrations; and repealing an act," further providing for definitions and for prohibited acts and penalties; and providing for ephedrine and pseudoephedrine and electronic tracking.

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

Section 1. Section 2(b) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, is amended by adding a definition to read:

Section 2. Definitions.—* * *

(b) As used in this act:

* * *

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

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

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

(3) complies with the security policy of the Criminal Justice Information Services Division of the Federal Bureau of Investigation or its successor;

(4) complies with information exchange standards adopted by the National Information Exchange Model or its successor;

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

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

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

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

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

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

* * *

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

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

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

* * *

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

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

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

* * *

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

Section 13.6. Ephedrine and Pseudoephedrine; Electronic Tracking.—

(a) Retailers shall be prohibited from making sales to an individual of, and an individual shall be prohibited from purchasing, ephedrine or pseudoephedrine base, or their salts, isomers or salts of isomers in excess of the following amounts:

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

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

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

(c) A retailer shall require any person purchasing a nonprescription product that contains ephedrine or pseudoephedrine to present a valid government-issued photo identification, or other document considered acceptable under Federal law for this purpose, at the point of sale. The retailer shall record the following:

(1) Name and address of the purchaser.

(2) Name and quantity of product purchased.

(3) Date and time of purchase.

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

(d) A retailer shall, before completing a sale under this section, electronically submit the required information to the real-time stop sale system administered by the department, provided that the system is available without a charge for retailers to access. Absent negligence, wantonness, recklessness or deliberate misconduct, any retailer using the

electronic sales tracking system in accordance with this subsection shall not be civilly liable as a result of any act or omission in carrying out the duties required by this subsection and shall be immune from liability to any third party unless the retailer has violated any provision of this subsection in relation to a claim brought for such violation.

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

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

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

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

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

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

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

APPROVED—The 9th day of July, A.D. 2013

TOM CORBETT