

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 710 Session of
2013

INTRODUCED BY BAKER, CORBIN, DIGIROLAMO, MICOZZIE, STERN,
PICKETT, SWANGER, MILLARD, COHEN, BOBACK, R. MILLER,
V. BROWN, KORTZ, GINGRICH, HESS, MOUL, GROVE, MURT, FABRIZIO,
DENLINGER, BIZZARRO, CLYMER, EVERETT, QUINN AND CALTAGIRONE,
FEBRUARY 13, 2013

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, OCTOBER 22, 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 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 13.1 of the act of April 14, 1972~~ <--
16 ~~(P.L.233, No.64), known as The Controlled Substance, Drug,~~
17 ~~Device and Cosmetic Act, amended April 29, 2010 (P.L.182,~~
18 ~~No.21), is amended to read:~~

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

~~(1) Possessing or transporting liquefied ammonia gas:~~
~~(i) for any purpose other than legitimate agricultural or~~
~~industrial use; or~~

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

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

~~(3) Possessing [red phosphorous, hypophosphoric acid,~~
~~ammonium sulfate, phosphorous, iodine, hydriodic acid,~~
~~ephedrine, pseudoephedrine, lithium, sodium, potassium,~~
~~sassafras oil, safrole oil or other oil containing safrole or~~
~~equivalent, whether in powder or liquid form,]~~
~~phenylpropanolamine, phenyl acetone, methylamine, ammonium~~
~~sulfate, ammonium nitrate or phenyl acetic acid or a precursor~~
~~substance with intent to unlawfully manufacture a controlled~~
~~substance.~~

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

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

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

SECTION 1. SECTION 3(C) OF THE ACT OF APRIL 14, 1972
(P.L.233, NO.64), KNOWN AS THE CONTROLLED SUBSTANCE, DRUG,
DEVICE AND COSMETIC ACT, IS AMENDED AND THE SECTION IS AMENDED

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1 BY ADDING SUBSECTIONS TO READ:
2 SECTION 3. AUTHORITY TO CONTROL.--

3 * * *

4 (C) [THE SECRETARY SHALL NOT REMOVE ANY SUBSTANCE FROM
5 CONTROL UNDER THIS ACT UNLESS SPECIFICALLY AUTHORIZED BY THE
6 GENERAL ASSEMBLY TO DO SO. THE SECRETARY SHALL NOT RESCHEDULE
7 ANY CONTROLLED SUBSTANCE UNLESS SPECIFICALLY AUTHORIZED BY THE
8 BOARD TO DO SO.] NOTWITHSTANDING SUBSECTION (A), IF THE
9 SECRETARY FINDS THAT THE HEALTH AND SAFETY OF THE PUBLIC WILL
10 NOT BE ADVERSELY AFFECTED, THE SECRETARY MAY:

11 (1) RESCHEDULE ANY CONTROLLED SUBSTANCE TO COINCIDE WITH
12 FEDERAL LAW, INCLUDING THE CONTROLLED SUBSTANCES ACT (PUBLIC LAW
13 91-513, 84 STAT. 1236, 21 U.S.C. § 801 ET SEQ.), REGULATIONS
14 PROMULGATED UNDER 21 CFR CH. 2 (RELATING TO DRUG ENFORCEMENT
15 ADMINISTRATION, DEPARTMENT OF JUSTICE) OR ANY FEDERAL JUDICIAL
16 ORDER. THE SECRETARY SHALL PUBLISH A NOTICE IN THE PENNSYLVANIA
17 BULLETIN OF THE RESCHEDULING OF A CONTROLLED SUBSTANCE UNDER
18 THIS CLAUSE. THE RESCHEDULING OF THE CONTROLLED SUBSTANCE TO A
19 HIGHER SCHEDULE MAY NOT TAKE EFFECT EARLIER THAN THIRTY DAYS
20 AFTER PUBLICATION OF THE NOTICE IN THE PENNSYLVANIA BULLETIN.
21 THE RESCHEDULING OF A CONTROLLED SUBSTANCE TO A LOWER SCHEDULE
22 MAY TAKE EFFECT UPON PUBLICATION IN THE PENNSYLVANIA BULLETIN.

23 (2) EXCLUDE ANY SUBSTANCE OR REMOVE ANY CONTROLLED SUBSTANCE
24 FROM ANY SCHEDULE, PROVIDED THAT THE SUBSTANCE OR CONTROLLED
25 SUBSTANCE HAS BEEN APPROVED FOR OVER-THE-COUNTER USE WITHOUT A
26 PRESCRIPTION UNDER FEDERAL LAW, INCLUDING THE FEDERAL FOOD, DRUG
27 AND COSMETIC ACT (52 STAT. 1040, 21 U.S.C. § 301, ET SEQ.),
28 REGULATIONS PROMULGATED UNDER 21 CFR CH. 1 (RELATING TO FOOD AND
29 DRUG ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES) OR
30 ANY FEDERAL JUDICIAL ORDER.

(D) IF THE SECRETARY FINDS THAT THE SCHEDULING OF A
SUBSTANCE ON A TEMPORARY BASIS IS NECESSARY TO AVOID AN IMMINENT
HAZARD TO PUBLIC SAFETY, THE SECRETARY MAY, BY PUBLISHING A
FINAL NOTICE IN THE PENNSYLVANIA BULLETIN AND WITHOUT REGARD TO
THE REQUIREMENTS OF SUBSECTION (A), SCHEDULE A SUBSTANCE UNDER
ONE OF THE SCHEDULES IN SECTION 4 IF THE SUBSTANCE IS NOT LISTED
IN ANY OTHER SCHEDULE IN SECTION 4 OR 28 PA. CODE §§ 25.72
(RELATING TO SCHEDULES OF CONTROLLED SUBSTANCES) AND 25.75
(RELATING TO PAREGORIC) AND IF NO EXCEPTION OR APPROVAL IS IN
EFFECT FOR THE SUBSTANCE UNDER SECTION 505 OF THE FEDERAL FOOD,
DRUG AND COSMETIC ACT (52 STAT. 1040, 21 U.S.C. § 355). THE
FOLLOWING APPLY:

(1) A FINAL ORDER MAY NOT BE ISSUED BEFORE THE EXPIRATION OF ◀
FOURTEEN DAYS AFTER BOTH:

(I) THE DATE OF PUBLICATION IN THE PENNSYLVANIA BULLETIN OF
A PROPOSED NOTICE OF THE INTENTION TO ISSUE A FINAL NOTICE AND
THE GROUNDS UPON WHICH THE ORDER IS TO BE ISSUED.

(II) THE DATE THE SECRETARY TRANSMITTED THE NOTICE TO THE
ATTORNEY GENERAL AS REQUIRED BY CLAUSE (4).

(2) THE SCHEDULING OF A SUBSTANCE UNDER THIS SUBSECTION
SHALL EXPIRE AT THE END OF ONE YEAR FROM THE DATE OF PUBLICATION
OF THE FINAL NOTICE SCHEDULING OF THE SUBSTANCE EXCEPT THAT THE
SECRETARY MAY, DURING THE PENDENCY OF PROCEEDINGS UNDER
SUBSECTION (A) WITH RESPECT TO THE SUBSTANCE, EXTEND THE
TEMPORARY SCHEDULING FOR UP TO ONE ADDITIONAL YEAR BY PUBLISHING
A SUBSEQUENT NOTICE IN THE PENNSYLVANIA BULLETIN PRIOR TO THE
EXPIRATION OF THE INITIAL NOTICE.

(3) WHEN ISSUING A PROPOSED NOTICE UNDER CLAUSE (1), THE
SECRETARY SHALL BE REQUIRED TO CONSIDER, WITH RESPECT TO THE
FINDING OF AN IMMINENT HAZARD TO PUBLIC SAFETY, ONLY THOSE

1 FACTORS SET FORTH IN SUBSECTION (A) (4), (5), (6) AND (8), EXCEPT
2 THAT, IF CLAUSE (8) HAS BEEN MET REGARDING THE TEMPORARY OR
3 PERMANENT SCHEDULING OF A SPECIFIC SUBSTANCE UNDER FEDERAL LAW,
4 THE SECRETARY SHALL BE AUTHORIZED TO TEMPORARILY SCHEDULE THE
5 SUBSTANCE WITHOUT REGARD TO CLAUSES (4), (5) AND (6).

6 (4) THE SECRETARY SHALL TRANSMIT THE PROPOSED NOTICE ISSUED
7 UNDER CLAUSE (1) TO THE ATTORNEY GENERAL. THE ATTORNEY GENERAL
8 SHALL HAVE THIRTY DAYS FROM RECEIPT OF THE PROPOSED NOTICE TO
9 PROVIDE WRITTEN COMMENTS, IF ANY, ON RELEVANT ISSUES, INCLUDING
10 ACTUAL ABUSE, DIVERSION FROM LEGITIMATE CHANNELS AND CLANDESTINE
11 IMPORTATION, MANUFACTURE OR DISTRIBUTION. IN ISSUING A FINAL
12 NOTICE UNDER THIS SUBSECTION, THE SECRETARY SHALL TAKE INTO
13 CONSIDERATION ANY COMMENTS SUBMITTED BY THE ATTORNEY GENERAL.

14 (5) (I) EXCEPT AS PROVIDED IN SUBCLAUSE (II), DURING THE
15 TIME PERIOD THAT A SUBSTANCE IS TEMPORARILY SCHEDULED, THE
16 SECRETARY SHALL PROCEED WITH THE PERMANENT SCHEDULING OF THE
17 SUBSTANCE PURSUANT TO THE REQUIREMENTS UNDER SUBSECTION (A).

18 (II) IF A SUBSTANCE HAS BEEN TEMPORARILY SCHEDULED AND THE
19 SECRETARY PROCEEDS WITH PERMANENT SCHEDULING, THE SECRETARY
20 SHALL ONLY BE REQUIRED TO PROCEED UNDER SECTION 5(A) OF THE ACT
21 OF JUNE 25, 1982 (P.L.633, NO.181), KNOWN AS THE "REGULATORY
22 REVIEW ACT," BY SUBMITTING FINAL OMITTED REGULATIONS.

23 (III) A FINAL NOTICE ISSUED UNDER CLAUSE (1) WITH RESPECT TO
24 A SUBSTANCE SHALL BE VACATED UPON THE CONCLUSION OF A SUBSEQUENT
25 RULEMAKING PROCEEDING INITIATED UNDER SUBSECTION (A) WITH
26 RESPECT TO THE SUBSTANCE OR THE ENACTMENT OF LAW BY THE GENERAL
27 ASSEMBLY PERMANENTLY SCHEDULING THE SUBSTANCE.

28 (IV) WHILE THE SUBSTANCE IS TEMPORARILY SCHEDULED, IF THE
29 SECRETARY DETERMINES THAT A SUBSTANCE SHOULD NOT BE PERMANENTLY
30 SCHEDULED, AND NO LAW HAS BEEN ENACTED BY THE GENERAL ASSEMBLY

1 TO PERMANENTLY SCHEDULE THE SUBSTANCE, THE SECRETARY SHALL
2 PUBLISH A NOTICE IN THE PENNSYLVANIA BULLETIN WITH A RATIONALE
3 AS TO WHY THE SUBSTANCE IS NOT BEING PERMANENTLY SCHEDULED. UPON
4 PUBLICATION OF THE NOTICE, THE SUBSTANCE SHALL NO LONGER BE
5 CONSIDERED A CONTROLLED SUBSTANCE. WITHDRAWAL OF A TEMPORARILY
6 SCHEDULED SUBSTANCE UNDER THIS SUBCLAUSE SHALL NOT AFFECT ANY
7 CRIMINAL PROCEEDING OR CIVIL ACTION INITIATED BASED ON THE
8 TEMPORARY SCHEDULING.

9 (6) TEMPORARY SCHEDULING OF A SUBSTANCE BY THE SECRETARY
10 UNDER THIS SUBSECTION SHALL NOT BE SUBJECT TO SECTION 612 OF
11 THE ACT OF APRIL 9, 1929 (P.L.177, NO.175), KNOWN AS "THE
12 ADMINISTRATIVE CODE OF 1929," THE ACT OF JULY 31, 1968 (P.L.769,
13 NO.240), REFERRED TO AS THE COMMONWEALTH DOCUMENTS LAW, THE ACT
14 OF OCTOBER 15, 1980 (P.L.950, NO.164), KNOWN AS THE
15 "COMMONWEALTH ATTORNEYS ACT," OR THE "REGULATORY REVIEW ACT."

16 (7) A PROPOSED OR FINAL NOTICE ISSUED BY THE SECRETARY UNDER
17 THIS SUBSECTION SHALL NOT BE SUBJECT TO JUDICIAL REVIEW.

18 (E) AS USED IN THIS SECTION, THE TERM "SUBSTANCE" SHALL
19 INCLUDE ANY GROUP OF SUBSTANCES, MATERIAL, MIXTURE, COMPOUND,
20 SALTS, ISOMERS, SALTS OF ISOMERS, ANALOGS, HOMOLOGUES OR
21 HOMOLOGOUS SERIES.

22 SECTION 2. SECTION 13.1 OF THE ACT, AMENDED JUNE 24, 2013
23 (P.L.147, NO.26), IS AMENDED TO READ:

24 SECTION 13.1. LIQUEFIED AMMONIA GAS; PRECURSORS AND
25 CHEMICALS.--(A) THE FOLLOWING ACTS ARE PROHIBITED:

- 26 (1) POSSESSING OR TRANSPORTING LIQUEFIED AMMONIA GAS:
27 (I) FOR ANY PURPOSE OTHER THAN LEGITIMATE AGRICULTURAL OR
28 INDUSTRIAL USE; OR
29 (II) IN A CONTAINER NOT APPROVED BY THE DEPARTMENT OF
30 AGRICULTURE OR THE DEPARTMENT OF TRANSPORTATION OR BOTH.

(2) POSSESSING OR TRANSPORTING LIQUEFIED AMMONIA GAS WITH
INTENT TO UNLAWFULLY MANUFACTURE A CONTROLLED SUBSTANCE.

(3) POSSESSING [RED PHOSPHOROUS, HYPOPHOSPHORIC ACID,
AMMONIUM SULFATE, PHOSPHOROUS, IODINE, HYDRIODIC ACID,
EPHEDRINE, PSEUDOEPHEDRINE, LITHIUM, SODIUM, POTASSIUM,
SASSAFRAS OIL, SAFROLE OIL OR OTHER OIL CONTAINING SAFROLE OR
EQUIVALENT, WHETHER IN POWDER OR LIQUID FORM,]
PHENYLPROPANOLAMINE, PHENYL ACETONE, METHYLAMINE, AMMONIUM
SULFATE, AMMONIUM NITRATE [OR], PHENYL ACETIC ACID OR A
PRECURSOR SUBSTANCE WITH INTENT TO UNLAWFULLY MANUFACTURE A
CONTROLLED SUBSTANCE.

(4) POSSESSING THE ESTERS, SALTS, OPTICAL ISOMERS OR SALTS
OF OPTICAL ISOMERS OF ANY OF THE SUBSTANCES UNDER CLAUSE (3)
WITH INTENT TO MANUFACTURE A CONTROLLED SUBSTANCE.

(B) A PERSON WHO VIOLATES SUBSECTION (A) (1) COMMITS A
MISDEMEANOR AND UPON CONVICTION SHALL BE SENTENCED TO
IMPRISONMENT NOT EXCEEDING FIVE YEARS AND TO PAY A FINE NOT
EXCEEDING TEN THOUSAND DOLLARS (\$10,000).

(C) A PERSON WHO VIOLATES SUBSECTION (A) (2), (3) OR (4)
COMMITS A FELONY AND UPON CONVICTION SHALL BE SENTENCED TO
IMPRISONMENT NOT EXCEEDING SEVEN YEARS AND TO PAY A FINE NOT
EXCEEDING FIFTEEN THOUSAND DOLLARS (\$15,000).

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

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

(2) salts of optical isomers or lithium, sodium, potassium,
sassafras oil or safrole oil or other oil containing safrole or

equivalent, whether in powder or liquid form; and

(3) any chemical in a regulation PROMULGATED BY THE
SECRETARY under section 35(b).

Section 2 3. Section 35 of the act is amended to read:

Section 35. Promulgation of Regulations.--(a) The secretary shall have the authority to promulgate in accordance with the provisions of this section and of the act of July 31, 1968 (P.L.769, No. 240), known as the "Commonwealth Documents Law" any regulations hereinbefore referred to in this act and such other regulations with the consent of the board regarding the possession, distribution, sale, purchase or manufacture of controlled substances, other drugs or devices or cosmetics as may be necessary to aid in the enforcement of this act.

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

(1) The secretary may promulgate the regulation:

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

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

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

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

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

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

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

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

1 (vi) Any other factors relevant to and consistent with
2 public health and safety.

3 (3) Promulgation of the regulation is exempt from SECTION <--
4 612 OF THE ACT OF APRIL 9, 1929 (P.L.177, NO.175), KNOWN AS "THE
5 ADMINISTRATIVE CODE OF 1929" AND the act of June 25, 1982
6 (P.L.633, No.181), known as the "Regulatory Review Act."

7 Section 3 4. This act shall take effect in 60 days. <--