

1 SB344
2 136149-1
3 By Senators Holtzclaw, Brewbaker, Ward and Marsh
4 RFD: Health
5 First Read: 21-FEB-12

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, the sale of
9 over-the-counter products containing ephedrine or
10 pseudoephedrine is regulated and certain records of
11 sales are required to be kept.

12 This bill would further regulate the sale of
13 over-the-counter products containing certain
14 quantities of ephedrine or pseudoephedrine within
15 certain periods of time.

16 The bill would prohibit the sale of any
17 product containing pseudoephedrine and ephedrine
18 compounds from anywhere other than a licensed
19 pharmacy.

20 This bill would specify certain
21 identification necessary to purchase a product
22 containing pseudoephedrine and ephedrine compounds.

23 This bill would enhance criminal penalties
24 for violations of laws governing the sale of
25 products containing pseudoephedrine and ephedrine
26 compounds.

1 This bill would revise the membership of the
2 Alabama Drug Abuse Task Force.

3 This bill would require the Alabama Criminal
4 Justice Information Center to implement an
5 electronic drug offender tracking system to
6 catalogue all criminal convictions in this state
7 and other states of persons with certain felony and
8 misdemeanor convictions related to methamphetamine.

9 This bill would make it a Class B felony to
10 purchase or to attempt, solicit another, or
11 conspire to purchase or sell, transfer, or
12 otherwise furnish a listed precursor chemical or
13 pseudoephedrine and ephedrine compounds for the
14 purpose of providing or sharing any pseudoephedrine
15 and ephedrine compounds to manufacture
16 methamphetamine or a controlled substance.

17 This bill also would provide specific
18 criminal penalties for certain uses of drug
19 paraphernalia in violation of the controlled
20 substances laws of this state.

21 Amendment 621 of the Constitution of Alabama
22 of 1901, now appearing as Section 111.05 of the
23 Official Recompilation of the Constitution of
24 Alabama of 1901, as amended, prohibits a general
25 law whose purpose or effect would be to require a
26 new or increased expenditure of local funds from
27 becoming effective with regard to a local

1 governmental entity without enactment by a 2/3 vote
2 unless: it comes within one of a number of
3 specified exceptions; it is approved by the
4 affected entity; or the Legislature appropriates
5 funds, or provides a local source of revenue, to
6 the entity for the purpose.

7 The purpose or effect of this bill would be
8 to require a new or increased expenditure of local
9 funds within the meaning of the amendment. However,
10 the bill does not require approval of a local
11 governmental entity or enactment by a 2/3 vote to
12 become effective because it comes within one of the
13 specified exceptions contained in the amendment.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT

18
19 To amend Sections 13A-12-260 and 20-2-190, Code of
20 Alabama 1975; to add Section 20-2-190.2 to the Code of Alabama
21 1975; to further regulate the sale of over-the-counter
22 products containing certain quantities of ephedrine or
23 pseudoephedrine within certain periods of time; to enhance
24 existing criminal penalties for violations and to provide
25 additional criminal penalties; to revise the membership of the
26 Alabama Drug Abuse Task Force and to require a report to the
27 Legislature; to require the Alabama Criminal Justice

1 Information Center to implement an electronic drug offender
2 tracking system to catalogue all criminal convictions in this
3 state and other states of persons with certain felony and
4 misdemeanor convictions related to methamphetamine; to provide
5 specific criminal penalties for certain uses of drug
6 paraphernalia in violation of the controlled substances laws
7 of this state; and in connection therewith would have as its
8 purpose or effect the requirement of a new or increased
9 expenditure of local funds within the meaning of Amendment 621
10 of the Constitution of Alabama of 1901, now appearing as
11 Section 111.05 of the Official Recompilation of the
12 Constitution of Alabama of 1901, as amended.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. (a) The Legislature finds the following:

15 (1) The danger of methamphetamine manufacture to the
16 public and especially to law enforcement involved in the
17 investigation and clean-up of clandestine methamphetamine
18 laboratories is of paramount concern.

19 (2) Ephedrine or pseudoephedrine, their salts or
20 optical isomers, or salts of optical isomers are the essential
21 ingredient in the manufacture of methamphetamine.

22 (b) It is the intent of the Legislature to prevent
23 and criminally sanction the practice of "smurfing." Smurfing
24 is the common name for the act of a person within the state or
25 from other states, acting alone or in concert, at the
26 direction or behest of another to circumvent the provisions of
27 state law by purchasing multiple quantities of pseudoephedrine

1 and ephedrine compounds for the intent of combining or using
2 such quantities for the purposes of manufacturing or
3 attempting to manufacture methamphetamine.

4 Section 2. Sections 13A-12-260 and 20-2-290, Code of
5 Alabama 1975, are amended to read as follows:

6 §13A-12-260.

7 "(a) Definition of "drug paraphernalia". - As used
8 in this section, the term "drug paraphernalia" means all
9 equipment, products, and materials of any kind which are used,
10 intended for use, or designed for use, in planting,
11 propagating, cultivating, growing, harvesting, manufacturing,
12 compounding, converting, producing, processing, preparing,
13 testing, analyzing, packaging, repackaging, storing,
14 containing, concealing, injecting, ingesting, inhaling, or
15 otherwise introducing into the human body a controlled
16 substance in violation of the controlled substances laws of
17 this state. It includes but is not limited to:

18 "(1) Kits used, intended for use, or designed for
19 use in planting, propagating, cultivating, growing, or
20 harvesting of any species of plant which is a controlled
21 substance or from which a controlled substance can be derived;

22 "(2) Kits used, intended for use, or designed for
23 use in manufacturing, compounding, converting, producing,
24 processing, or preparing controlled substances;

25 "(3) Isomerization devices used, intended for use,
26 or designed for use in increasing the potency of any species
27 of plant which is a controlled substance;

1 "(4) Testing equipment used, intended for use, or
2 designed for use in identifying, or in analyzing the strength,
3 effectiveness, or purity of controlled substances;

4 "(5) Scales and balances used, intended for use, or
5 designed for use in weighing or measuring controlled
6 substances;

7 "(6) Dilutants and adulterants, such as quinine
8 hydrochloride, mannitol, mannite, dextrose and lactose, used,
9 intended for use, or designed for use in cutting controlled
10 substances;

11 "(7) Separation gins and sifters used, intended for
12 use, or designed for use in removing twigs and seeds from, or
13 in otherwise cleaning or refining, marihuana;

14 "(8) Blenders, bowls, containers, spoons and mixing
15 devices used, intended for use, or designed for use in
16 compounding controlled substances;

17 "(9) Capsules, balloons, envelopes and other
18 containers used, intended for use, or designed for use in
19 packaging small quantities of controlled substances;

20 "(10) Containers and other objects used, intended
21 for use, or designed for use in storing or concealing
22 controlled substances;

23 "(11) Hypodermic syringes, needles and other objects
24 used, intended for use, or designed for use in parenterally
25 injecting controlled substances into the human body;

26 "(12) Objects used, intended for use, or designed
27 for use in ingesting, inhaling, or otherwise introducing

1 marihuana, tetrahydro cannabinols, cocaine, hashish, or
2 hashish oil into the human body, such as:

3 "a. Metal, wooden, acrylic, glass, stone, plastic,
4 or ceramic pipes with or without screens, permanent screens,
5 hashish heads, or punctured metal bowls;

6 "b. Water pipes;

7 "c. Carburetion tubes and devices;

8 "d. Smoking and carburetion masks;

9 "e. Roach clips: Meaning objects used to hold
10 burning material, such as a marihuana cigarette, that has
11 become too small or too short to be held in the hand;

12 "f. Miniature cocaine spoons, and cocaine vials;

13 "g. Chamber pipes;

14 "h. Carburetor pipes;

15 "i. Electric pipes;

16 "j. Air-driven pipes;

17 "k. Chillums;

18 "l. Bongs;

19 "m. Ice pipes or chillers;

20 "n. Glass tubes which are hollow, cylindrical items
21 made of glass which are smaller than three-quarters of an inch
22 in diameter, shorter than 12 inches in length, and which are
23 not sealed with glass at both ends.

24 "(b) Factors in determining whether object is drug
25 paraphernalia. - In determining whether an object is drug
26 paraphernalia, a court or other authority shall consider, in

1 addition to all other logically relevant factors, the
2 following:

3 "(1) Statements by an owner or by anyone in control
4 of the object concerning its use;

5 "(2) Prior convictions, if any, of an owner, or of
6 anyone in control of the object, under any state or federal
7 law relating to any controlled substance;

8 "(3) The proximity of the object, in time and space,
9 to a direct violation of this section or to a controlled
10 substance;

11 "(4) The existence of any residue of controlled
12 substances on the object;

13 "(5) Direct or circumstantial evidence of the intent
14 of an owner, or of anyone in control of the object, to deliver
15 it to persons whom he knows intend to use the object to
16 facilitate a violation of the controlled substances laws of
17 this state; the innocence of an owner, or of anyone in control
18 of the object, as to a direct violation of such laws shall not
19 prevent a finding that the object is intended for use, or
20 designed for use as drug paraphernalia;

21 "(6) Instructions, oral or written, provided with
22 the object concerning its use;

23 "(7) Descriptive materials accompanying the object
24 which explain or depict its use;

25 "(8) National and local advertising concerning its
26 use;

1 "(9) The manner in which the object is displayed for
2 sale;

3 "(10) Whether the owner, or anyone in control of the
4 object, is a legitimate supplier of like or related items to
5 the community, such as a licensed distributor or dealer of
6 tobacco products;

7 "(11) Direct or circumstantial evidence of the ratio
8 of sales of the object or objects to the total sales of the
9 business enterprise;

10 "(12) The existence and scope of legitimate uses for
11 the object in the community;

12 "(13) Expert testimony concerning its use.

13 "(c) Use or possession with intent to use. - It
14 shall be unlawful for any person to use, or to possess with
15 intent to use, or to use to inject, ingest, inhale or
16 otherwise introduce into the human body, drug paraphernalia to
17 plant, propagate, cultivate, grow, harvest, ~~manufacture,~~
18 compound, convert, produce, process, prepare, test, analyze,
19 pack, repack, store, contain or conceal a controlled substance
20 in violation of the controlled substances laws of this state.
21 Any person who violates this subsection is guilty of a Class A
22 misdemeanor and upon conviction shall be punished as
23 prescribed by law.

24 "(d) (1) It shall be unlawful for any person to use,
25 deliver, or sell, possess with intent to deliver or sell, or
26 manufacture with intent to deliver or sell, or to possess with
27 intent to use, drug paraphernalia to manufacture a controlled

1 substance in violation of the controlled substances laws of
2 this state.

3 "(2) Any person who violates this subsection is
4 guilty of a Class C felony. If a person is in violation of
5 this subsection and is in possession of a firearm at the time
6 of the offense, the person shall be guilty of a Class B
7 felony.

8 "~~(d)~~(e) Delivery or sale.

9 "(1) It shall be unlawful for any person to deliver
10 or sell, possess with intent to deliver or sell, or
11 manufacture with intent to deliver or sell drug paraphernalia,
12 knowing that it will be used to plant, propagate, cultivate,
13 grow, harvest, ~~manufacture~~, compound, convert, produce,
14 process, prepare, test, analyze, pack, repack, store, contain,
15 conceal, inject, ingest, inhale, or otherwise introduce into
16 the human body a controlled substance in violation of the
17 controlled substances laws of this state. Any person who
18 violates this section is guilty of a Class A misdemeanor and
19 upon conviction shall be punished as prescribed by law. A
20 person who is convicted of a subsequent violation of this
21 subsection shall be guilty of a Class C felony and punished as
22 prescribed by law. Any person convicted of violating this
23 subsection who previously has been convicted of violating
24 subdivision (2) of this subsection shall be subject to the
25 same penalties specified for subsequent violations of this
26 subsection.

1 "(2) Any person 18 years of age or over who violates
2 subdivision (1) of this subsection by delivering drug
3 paraphernalia to a person under 18 years of age who is at
4 least three years his junior shall be guilty of a Class B
5 felony and upon conviction shall be punished as prescribed by
6 law.

7 "~~(e)~~ (f) Contraband; forfeiture. - All drug
8 paraphernalia used in violation of this section shall be
9 contraband and subject to the forfeiture laws of this state
10 and Section 20-2-93 as amended, in particular.

11 §20-2-190.

12 "(a) Any person who manufactures, sells, transfers,
13 receives, or possesses a listed precursor chemical violates
14 this article if the person:

15 "(1) Knowingly fails to comply with the reporting
16 requirements of this article;

17 "(2) Knowingly makes a false statement in a report
18 or record required by this article or the rules adopted
19 thereunder;

20 "(3) Is required by this article to have a listed
21 precursor chemical license or permit, and is a person as
22 defined by this article, and knowingly or deliberately fails
23 to obtain such a license or permit. An offense under this
24 subsection shall constitute a Class C felony.

25 "(b) Notwithstanding the provisions of Section
26 20-2-188, a person who possesses, sells, transfers, or
27 otherwise furnishes or attempts to solicit another or

1 conspires to possess, sell, transfer, or otherwise furnish a
2 listed precursor chemical or a product containing a precursor
3 chemical or ephedrine or pseudoephedrine, their salts or
4 optical isomers, or salts of optical isomers commits an
5 offense if the person possesses, sells, transfers, or
6 furnishes the substance with the knowledge or intent that the
7 substance will be used in the unlawful manufacture of a
8 controlled substance. An offense under this subsection shall
9 constitute a Class B felony.

10 "(c) (1) ~~a.~~ It shall be unlawful for any person,
11 business, or entity to knowingly sell any ephedrine or
12 pseudoephedrine, their salts or optical isomers, or salts of
13 optical isomers unless sold from a pharmacy licensed by the
14 Alabama Board of Pharmacy. Any ephedrine or pseudoephedrine,
15 their salts or optical isomers, or salts of optical isomers
16 sold within a pharmacy must be sold by an individual licensed
17 as a pharmacist, a pharmacy technician licensed by the Alabama
18 Board of Pharmacy, or by an employee of the pharmacy under the
19 direct supervision and control of a licensed pharmacist.

20 "(2) Products whose sole active ingredient is
21 ephedrine or pseudoephedrine in strength of 30 mg. or more per
22 tablet cannot be offered for retail sale loose in bottles, but
23 must be sold only in blister packages.

24 "~~b.~~ (3) All packages of tablets containing ephedrine
25 or pseudoephedrine shall be stored by ~~retail establishments a~~
26 pharmacy by:

1 ~~"1. Placing placing the products behind a counter,~~
2 ~~within the pharmacy where the public is not permitted; or.~~

3 ~~"2. Placing the products in a locked display case so~~
4 ~~that a customer wanting access to the packages must ask a~~
5 ~~store employee for assistance.~~

6 ~~"(2)(4)~~ No person shall deliver, sell, or purchase
7 products sold over-the-counter that contain a combined total
8 of more than 3.6 grams per calendar day or more than ~~nine~~ 7.5
9 grams per 30 days, of ephedrine base or pseudoephedrine base.
10 It shall not be a defense under this subdivision if no money
11 was exchanged during a transaction that would otherwise be
12 unlawful under this subdivision.

13 ~~"(3)(5)a.~~ Each pharmacy ~~or retail establishment~~
14 selling an over-the-counter product in compliance with
15 paragraph b. of this subdivision ~~(3)~~ shall require the
16 purchaser of the product or products to be at least 18 years
17 of age, to provide ~~government-issued photographic~~
18 ~~identification of himself or herself~~ a valid, unsuspended
19 driver's license or nondriver identification card issued by
20 this state, a valid, unsuspended driver's license or nondriver
21 identification card issued by another state, a United States
22 Uniformed Services Privilege and Identification Card, or a
23 United States or foreign passport, and to sign a record of
24 each transaction. A record of each transaction shall include
25 the magnetic transfer or electronic entry of information data
26 from the identification card into the system, as well as the
27 type of identification card used, including the number, name,

1 date of birth, and current, valid address of the purchaser,
2 the date and time of the sale, the name of the product being
3 sold, as well as the total quantity in grams, of ephedrine or
4 pseudoephedrine being sold. The system required pursuant to
5 this section shall be available to the state and to ~~retailers~~
6 pharmacies accessing the system without cost. Effective
7 January 1, 2011, provided a system is available to the state
8 without cost to the state or ~~retailers~~ pharmacies for
9 accessing the system, before completing a sale of a product
10 covered by this section, a ~~retailer~~ pharmacy shall submit the
11 required information to the electronic sales tracking system
12 established under subdivision (1) of subsection ~~(h)~~ (i). The
13 seller shall not complete the sale if the system generates a
14 stop sale alert except when the seller follows the procedure
15 described under subsection ~~(h)~~ (i) for overriding the stop
16 sale alert when the seller has fear of bodily harm. Any seller
17 who fails to comply with this subdivision shall be guilty of a
18 ~~Class C misdemeanor~~ Class A misdemeanor upon a first offense,
19 ~~a Class A misdemeanor on a second offense~~, and a Class C
20 felony on a ~~third~~ second or subsequent offense, except that
21 sellers who exercise the override feature described under
22 subdivision (3) of subsection ~~(h)~~ (i) when a stop sale alert
23 is generated shall not be subject to misdemeanor or felony
24 charges. Absent negligence, wantonness, recklessness, or
25 deliberate misconduct, any retailer maintaining the electronic
26 sales tracking system in accordance with this subdivision
27 shall not be civilly liable as a result of any act or omission

1 in carrying out the duties required by this subsection and
2 shall be immune from liability to any third party unless the
3 retailer has violated any provision of this subsection in
4 relation to a claim brought for such violation. Any excessive
5 or suspicious sales of such a product by any wholesaler,
6 manufacturer, or repackager as defined in Section 34-23-1
7 shall be reported to the Alcohol Beverage Control Board and
8 the Board of Pharmacy. Any person who fails to comply with
9 this subdivision shall be guilty of a Class A misdemeanor upon
10 a first offense, and a Class C felony upon a second or
11 subsequent offense.

12 "b. If a pharmacy ~~or retail establishment~~ selling an
13 over-the-counter product in compliance with ~~paragraph b. of~~
14 subdivision ~~(1)~~ (3) experiences mechanical or electronic
15 failure of the electronic sales tracking system and is unable
16 to comply with paragraph a. of this subdivision, the pharmacy
17 ~~or retail establishment~~ shall maintain a written log or an
18 alternative electronic recordkeeping mechanism that complies
19 with all identification and documentation requirements of the
20 act adding the amendatory language, until the pharmacy ~~or~~
21 ~~retail establishment~~ is able to comply with paragraph a. of
22 this subdivision.

23 "~~c. A pharmacy or retail establishment selling an~~
24 ~~over-the-counter product in compliance with paragraph b. of~~
25 ~~subdivision (1) may seek an exemption from submitting~~
26 ~~transactions to the electronic sales tracking system in~~
27 ~~compliance with this subdivision in writing to the Alabama~~

1 ~~Alcoholic Beverage Control Board stating the reasons therefor.~~
2 ~~The board may grant an exemption for good cause shown, but in~~
3 ~~no event shall such exemption exceed 180 days. Any pharmacy or~~
4 ~~retail establishment that receives an exemption shall maintain~~
5 ~~the required log information in another format and shall~~
6 ~~require the purchaser to provide the information required~~
7 ~~under paragraph a. of this subdivision before completion of~~
8 ~~any sale. The required sales records shall be maintained as a~~
9 ~~record of each sale for inspection by any law enforcement~~
10 ~~officer or inspector of the Board of Pharmacy during normal~~
11 ~~business hours.~~

12 "~~(4)~~(6) This subsection does not apply to products
13 dispensed pursuant to a legitimate prescription.

14 "~~(5)~~(7) This subsection shall preempt all local
15 ordinances or regulations governing the sale or purchase of
16 ~~over-the-counter~~ products containing ephedrine or
17 pseudoephedrine.

18 "~~(6)~~(8) A ~~retailer~~ pharmacist who is the general
19 owner or operator of an establishment where ephedrine or
20 pseudoephedrine products are available for sale shall not be
21 penalized pursuant to this section for conduct of an employee
22 if the retailer documents that an employee training program
23 was conducted by or approved by the Alabama Drug Abuse Task
24 Force (ADATF), pursuant to subsection ~~(g)~~ (h). As provided in
25 subsection (h), the Alabama Board of Pharmacy shall develop or
26 approve all training programs for those pharmacy employees
27 referenced in subdivision (1) and submit such programs to the

1 ADATF for approval. The ADATF must review any training
2 programs submitted by the Alabama Board of Pharmacy at its
3 next subsequent called or scheduled public meeting and within
4 7 days, report its decision in writing to the Alabama Board of
5 Pharmacy.

6 ~~"(7)(9)~~ A violation of ~~paragraph a. or b. of~~
7 ~~subdivision (1) or subdivision (2)~~ subdivision (1), (2), (3),
8 or (4) of this subsection shall constitute a Class ~~C~~ A
9 misdemeanor on a first offense and a Class C felony on
10 subsequent offenses. The violations shall be punishable as
11 provided by law.

12 "(d) Any person who resides within any state that
13 requires a prescription for any purchase of ephedrine or
14 pseudoephedrine, their salts or optical isomers, or salts of
15 optical isomers, or who presents a valid identification as
16 provided in subdivision (5) of subsection (c) from any state
17 that requires a prescription for any purchase of ephedrine or
18 pseudoephedrine, their salts or optical isomers, or salts of
19 optical isomers, may purchase those products only upon
20 presentation of a valid prescription for the ephedrine or
21 pseudoephedrine, their salts or optical isomers, or salts of
22 optical isomers. The electronic system established in the act
23 adding this subsection shall generate a stop sale and block
24 any purchase in violation of this subsection, absent a valid
25 lawful prescription.

26 ~~"(d)~~ (e) Beginning October 1, 2005, any wholesaler,
27 manufacturer, or repackager of drug products as defined in

1 Section 34-23-1, other than a wholesaler, manufacturer, or
2 repackager licensed by the Board of Pharmacy, shall obtain a
3 registration annually from the Alcoholic Beverage Control
4 Board which may promulgate and implement administrative rules
5 for the registrations. Beginning October 1, 2010, any
6 wholesaler, manufacturer, or repackager shall keep complete
7 records of all sales and transactions involving a listed
8 precursor chemical or a product containing a precursor
9 chemical including the names of all parties involved in the
10 transaction, the name of the products being sold, as well as
11 the total quantity in grams, of the precursor chemical or
12 product involved. Any wholesaler, manufacturer, or repackager
13 selling a listed precursor chemical or product to an
14 individual shall require the purchaser of the product or
15 products to be at least 18 years of age and to provide
16 government-issued photographic identification of himself or
17 herself. The records shall be maintained for at least 36
18 months and the records shall be available for inspection by
19 any law enforcement officer or inspector of the Board of
20 Pharmacy during normal business hours. Failure to comply with
21 subsections (d) and (e) shall be a Class A misdemeanor for a
22 first offense and a Class C felony for a second or subsequent
23 offense.

24 ~~"(e)(f)~~ Beginning October 1, 2005, every retailer of
25 ephedrine or pseudoephedrine, or a product containing
26 ephedrine or pseudoephedrine, ~~other than a retailer licensed~~
27 ~~by the Board of Pharmacy,~~ is required to be registered with

1 the Alcoholic Beverage Control Board to lawfully sell
2 ephedrine or pseudoephedrine products to consumers.

3 "~~(f)~~ (g) In addition to any other penalty that may be
4 provided, a sale of ephedrine or pseudoephedrine by a
5 wholesaler, manufacturer, repackager, or retailer without a
6 license as required by subsection ~~(d)~~ or (e) and (f) is a
7 Class A misdemeanor for a first offense and a Class C felony
8 for a second or subsequent offense. In addition to any other
9 penalty that may be provided, a sale of ephedrine or
10 pseudoephedrine in violation of this section by a wholesaler,
11 manufacturer, repackager, or retailer who is licensed as
12 required by subsection ~~(d)~~ or (e) or (f) shall result in
13 cancellation of the required registration and forfeiture of
14 the right to sell the products for at least ~~one year~~ two years
15 or longer as determined by the Alcoholic Beverage Control
16 Board.

17 "~~(g)~~ (h) (1) The Alabama Drug Abuse Task Force (ADATF)
18 is established and given the authority to do all of the
19 following:

20 "a. ~~Develop~~ Approve or develop drug awareness,
21 enforcement, education, prevention, and training programs. The
22 programs shall be designed to that will curb the abuse of all
23 dangerous, illegal, or abused drugs, including but not limited
24 to, methamphetamine precursors, other key, critical, common
25 ingredients used to make methamphetamine, or other illegal or
26 abused drugs in the State of Alabama. These programs ~~shall~~ may
27 be targeted for, but not limited to, employees of

1 establishments where ephedrine or pseudoephedrine products or
2 other key or critical or common ingredients in the illegal
3 manufacture of methamphetamine or other illegal or dangerous
4 drugs are available for sale and. Education, prevention, and
5 training programs also may be targeted to law enforcement,
6 prosecutors, the judiciary, students, or that may further
7 serve to protect, educate, and inform the public. The programs
8 ~~shall~~ may be administered by the Alcoholic Beverage Control
9 Board in conjunction with its program to restrict access to
10 tobacco products by minors pursuant to Chapter 11, Title 28.
11 The programs may be further administered by any law
12 enforcement drug abuse and violent crime task force, the
13 Alabama Department of Education, a licensed private drug
14 education or prevention entity approved by the ADATF, or any
15 other governmental or quasi-governmental agency or entity
16 partnering with the ADATF to serve the purposes of this
17 article. The Alabama Department of Public Health, ADATF, and
18 the Alabama State Board of Education, shall enter into a
19 memorandum of understanding to develop and implement the
20 training, education, or prevention programs referenced in this
21 section, and are authorized to expend any funds necessary to
22 further the requirements and objective of the ADATF and
23 subsection (h) or any other legitimate drug abuse prevention
24 or law enforcement purpose for the protection of the citizens
25 of this state.

26 "b. Advise the ABC Board, the Alabama Board of
27 Pharmacy, Alabama law enforcement, prosecutorial entities, or

1 other governmental or quasi-governmental agency or entity
2 partnering with the ADATF regarding its responsibilities
3 prescribed in this article.

4 "c. Report to the Legislature ~~as requested by the~~ by the
5 10th day of each legislative session, on the state of illegal
6 drug abuse, trends in the use, distribution, and manufacture
7 of illegal or synthetic drugs, and the use and misuse of and
8 misuse of drugs and related precursors in Alabama and make
9 recommendations regarding changes to the law and public policy
10 that may aid in curbing such abuse and misuse. The ADATF may
11 only gather such information from legitimately verifiable
12 sources or in a public forum. The report may include
13 recommendations with regard to public policy, potential
14 legislation, allocation of resources, or other recommendations
15 which may aid in the curbing of drug abuse and drug crime or
16 would best serve the safety and well being of the state. The
17 report may include, but is not limited to, all of the
18 following:

19 1. Statistical data involving drug abuse, drug
20 crime, or drug related crime.

21 2. Efforts within the state involving education,
22 prevention, and treatment of drug addiction.

23 3. Critical needs of law enforcement.

24 4. Organized crime efforts in the area of drug
25 distribution, trafficking, manufacturing, or related criminal
26 activity.

27 5. Critical needs for prisons.

1 6. Prosecution entities and the courts.

2 7. Other critical threat assessments involving the
3 safety of the State of Alabama.

4 "(2) The task force shall consist of the following
5 members:

6 "a. The Attorney General, or his or her designee.

7 "b. The President of the Alabama State Board of
8 Pharmacy, or his or her designee.

9 "c. A representative appointed by the District
10 Attorney's Association.

11 "d. A member of a regional county drug task force as
12 appointed by the District Attorney's Association.

13 "e. The Director of the Department of Public Safety,
14 or his or her designee.

15 "f. A representative appointed by the Chiefs of
16 Police Association.

17 "g. A member of a regional county drug task force as
18 appointed by the Chiefs of Police Association.

19 "h. A representative appointed by the Sheriff's
20 Association.

21 "i. A representative appointed by the Narcotics
22 Officers Association.

23 "j. A representative of the Alabama Association of
24 Pharmacists.

25 "k. The Director to the Alabama Department of
26 Revenue, or his or her designee.

1 "l. A member or director of the Alabama Sentencing
2 Commission.

3 "m. The Chair of the Alabama Assistant District
4 Attorneys Association.

5 "n. The Director of the Alabama Department of Human
6 Resources, or his or her designee.

7 "o. A representative of the Alabama Retail
8 Association.

9 "p. A representative of the Alabama Administrative
10 Office of Courts.

11 "q. The Commissioner of the Alabama Department of
12 Corrections, or his or her designee.

13 "r. The State Superintendent of Education, or his or
14 her designee.

15 "s. A representative of the Commission of
16 Environmental Management.

17 "t. The Director of the Alabama Department of
18 Forensic Sciences, or his or her designee.

19 "u. The State Health Officer, or his or her
20 designee.

21 "v. The Director of the Alabama Department of
22 Homeland Security, or his or her designee.

23 "w. A representative of the mental illness and
24 substance abuse services of the Alabama Department of Mental
25 Health.

26 "x. The Director of the Office of Prosecution
27 Services, or his or her designee.

1 y. A representative of the Alabama Criminal Justice
2 Information Center.

3 z. A representative of the Board of Dental
4 Examiners.

5 aa. A representative of the Alcoholic Beverage
6 Control Board.

7 "(3) The membership shall select a chair on a
8 bi-annual basis.

9 "(4) The membership of the task force shall be
10 inclusive and reflect the racial, gender, geographic,
11 urban/rural, and economic diversity of the state. ~~The board~~
12 ~~shall annually report to the Legislature by the second~~
13 ~~legislative day to what extent the board is complying with~~
14 ~~this diversity provision.~~

15 "(5) The chair of the task force shall be
16 responsible for the conduct of the meetings and any
17 correspondence or reports derived therefrom.

18 "(6) The chair of the task force shall call an
19 organizational meeting of the task force within 60 days of
20 July 1, 2010, and the task force shall report its meeting
21 schedule and procedural rules to the Clerk of the House of
22 Representatives and the Secretary of the Senate within 10 days
23 of the meeting. The task force shall instruct the Alabama
24 Criminal Justice Information Center regarding the creation of
25 a drug abuse information system, as well as a drug offender
26 tracking system pursuant to Section 20-2-190.1, to further the
27 mission of the task force and assist law enforcement in the

1 prevention of illegal drug activity. This system shall
2 include, but not be limited to, data regarding illegal drug
3 manufacture, trafficking, distribution, and usage trends
4 across the state. This information shall be made available and
5 be in a form and method which will enable the task force to
6 have an accurate and detailed understanding of the nature of
7 drug abuse and the geographical impact of the various abused
8 drugs in Alabama.

9 "(7) The task force may expend any funds from any
10 source, including, but not limited to, donations, grants, and
11 appropriations of public funds received for purposes of this
12 subsection.

13 "(8) No function or duties of the Drug Abuse Task
14 Force shall be the responsibility or under the purview of the
15 Governor of Alabama.

16 "(9) The task force shall not be obligated to fund
17 the development of programs described in subdivision (1)
18 unless the Legislature appropriates funding to the task force
19 for this purpose.

20 "(10) a. One year from the date of the full
21 implementation of this act, the task force shall report to the
22 Legislature a full and detailed assessment of all efforts to
23 limit or ultimately eliminate the availability of ephedrine or
24 ephedrine products to persons with the intent to use them for
25 manufacturing methamphetamine.

26 "b. The task force shall evaluate and report the
27 effectiveness of the electronic drug offender tracking system

1 created in Section 20-2-190.2, as well as statutory provisions
2 to track or block any illegal or inappropriate sales of
3 ephedrine products. This evaluation and report shall include
4 consideration of criminal statutes regarding the trafficking
5 and manufacture of methamphetamine, industry efforts to
6 prevent improper usage of ephedrine products, as well as other
7 pertinent laws. Where possible, the task force shall also
8 endeavor to project future capabilities to sustain or improve
9 efforts to limit illegal access to ephedrine products for
10 purposes of manufacturing methamphetamine.

11 "c. The task force, in its effort to provide a
12 complete and accurate report, may utilize, but is not limited
13 to, the use of the following resources:

14 "1. Reports from any governmental or
15 quasi-governmental entity.

16 "2. Statistical data or reports from Alabama
17 Criminal Justice Information Center, National Precursor Log
18 Exchange, Alabama Fusion Center, Drug Enforcement
19 Administration, or any entity that has membership on the task
20 force.

21 "3. Other appropriate law enforcement, drug
22 treatment, drug prevention, or medical entities that gather
23 verifiable data regarding drug usage, abuse, or any drug crime
24 or drug related crime.

25 "4. Relevant public hearings.

26 "5. Anecdotal information from named and
27 legitimately verifiable sources.

1 "~~(h)~~(i)(1) The Alabama Criminal Justice Information
2 Center shall implement a real-time electronic sales tracking
3 system to monitor the over-the-counter, nonprescription sale
4 of products in this state containing any detectable quantity
5 of ephedrine or pseudoephedrine, their salts or optical
6 isomers, or salts of optical isomers, provided that such
7 system is available to the state without cost to the state or
8 retailers for accessing the system. The electronic sales
9 tracking system shall have the technological capability to
10 receive ephedrine and pseudoephedrine sales data from retail
11 establishments submitted pursuant to this subsection. The
12 electronic sales tracking system shall be capable of bridging
13 with existing and future operational systems used by retail at
14 no cost to such retail establishment. The Alabama Criminal
15 Justice Information Center may enter into a public-private
16 partnership, through a memorandum of understanding or similar
17 arrangement, to make the system available to retailers and law
18 enforcement in the state.

19 "(2) The information contained in this electronic
20 sales tracking system shall be available to:

21 "a. Any law enforcement agency or entity as
22 authorized by the Alabama Criminal Justice Information Center;

23 "b. Pursuant to a subpoena.

24 "(3) This database established pursuant to this
25 subsection shall be capable of generating a stop sale alert,
26 which shall be a notification that completion of the sale
27 would result in the seller or purchaser violating the quantity

1 limits set forth in subdivision ~~(2)~~ (4) of subsection (c). The
2 system shall contain an override function for use by a
3 dispenser of ephedrine or pseudoephedrine who has a reasonable
4 fear of imminent bodily harm. Each instance in which the
5 override function is utilized shall be logged by the system.

6 "(j) The primary investigative law enforcement or
7 prosecutorial entity shall be entitled, upon order of the
8 court, to recover restitution from any defendant for any
9 legitimate cost incurred in the course of the investigation or
10 prosecution, upon conviction for any violation of Section
11 13A-12-260 or 20-2-190."

12 Section 3. Section 20-2-190.2 is added to the Code
13 of Alabama 1975, to read as follows:

14 §20-2-190.2.

15 (a) For the purposes of this section, the following
16 words shall have the following meanings:

17 (1) DRUG RELATED CONVICTION. Any conviction or plea
18 of nolo contendere for the offense of possession,
19 distribution, trafficking, or any degree of manufacture of
20 controlled substances, or drug paraphernalia. A drug related
21 conviction shall also include the inchoate crimes of attempt,
22 solicitation, or conspiracy of any of the drug related crimes.

23 (2) DRUG OFFENDER. Any person who has any conviction
24 listed in subdivision (1).

25 (b) Effective January 1, 2013, the Alabama Criminal
26 Justice Information Center shall implement a real-time
27 electronic drug offender tracking system to catalogue all

1 criminal convictions in this state of persons convicted of
2 felonies or misdemeanors involving the possession,
3 distribution, manufacture, or trafficking of controlled
4 substances. This catalogue shall include, but not be limited
5 to, paraphernalia convictions, violations of this article, in
6 whole or in part, attempts, conspiracies, or solicitations to
7 commit any crime involving the possession, distribution, or
8 manufacture of controlled substances. A drug offender
9 convicted of violations of this act, possession of a
10 controlled substance, or drug paraphernalia shall remain in
11 the drug offender tracking system for seven years beginning
12 upon each conviction. A drug offender convicted of
13 manufacture, distribution, or trafficking of controlled
14 substances shall remain in the drug offender tracking system
15 for ten years beginning upon each conviction. A person's name
16 shall be removed from the tracking system upon the expiration
17 of the applicable seven or ten years from the adjudication or
18 conviction of the last violation and confirmation that the
19 drug offender has no new convictions.

20 (c) The electronic drug offender tracking system
21 shall have the technological capability to receive ephedrine
22 and pseudoephedrine sales data from pharmacies submitted
23 pursuant to this section. The electronic drug offender
24 tracking system shall be capable of bridging with existing and
25 future operational systems used by pharmacies at no charge to
26 the pharmacies. The Alabama Criminal Justice Information
27 Center may enter into a public-private partnership, through a

1 memorandum of understanding or similar arrangement, to make
2 the system available to pharmacies and law enforcement in the
3 state.

4 (d) (1) Effective January 1, 2013, the Alabama
5 Criminal Justice Information Center, in cooperation with the
6 National Association of Drug Diversion Investigators, which
7 administers the National Precursor Log Exchange, shall devise
8 a method to electronically notify the association at least
9 every seven days of any person placed on the drug offender
10 tracking system. The notification shall include the first,
11 middle, and last names of the person, as well as the person's
12 date of birth. The Alabama Criminal Justice Information Center
13 shall devise a method to issue a stop sale alert for any
14 purchaser whose name has been submitted to the national
15 registry.

16 (2) The Alabama Criminal Justice Information Center
17 shall notify the association when a person is removed from the
18 drug offender tracking system as required under subsection
19 (b).

20 (e) The information contained in this electronic
21 drug offender tracking system shall be available:

22 (1) To any law enforcement agency or entity as
23 authorized by the Alabama Criminal Justice Information Center.

24 (2) Pursuant to a subpoena.

25 (f) The drug offender tracking system shall be
26 capable of generating a stop sale alert, which shall be a
27 notification that the purchaser having a previous conviction

1 for a drug related offense and completion of the sale would
2 result in a violation of law under Section 20-2-190. The
3 system shall contain an override function for use by a
4 dispenser of ephedrine or pseudoephedrine who has a reasonable
5 fear of imminent bodily harm. Each instance in which the
6 override function is utilized shall be logged by the system.

7 (g) Effective January 1, 2013, provided a system is
8 available to the state without cost to the state or pharmacies
9 for accessing the system, before completing a sale of a
10 product covered by this section, a pharmacy shall submit the
11 required information to the electronic drug offender tracking
12 system established under subsection (b).

13 (h) If the pharmacy, after checking the electronic
14 drug offender database, the purchaser is a drug offender, the
15 pharmacist shall not complete the sale, except when the seller
16 follows the procedure described under subsection (f) for
17 overriding the stop sale alert when the seller has fear of
18 bodily harm.

19 (i) Any seller who fails to comply with this section
20 shall be guilty of a Class A misdemeanor for a first offense,
21 and a Class C felony for a second or subsequent offense,
22 except that sellers who exercise the override feature
23 described under section (f) when a stop sale alert is
24 generated shall not be subject to misdemeanor or felony
25 charges. Absent negligence, wantonness, recklessness, or
26 deliberate misconduct, any pharmacist maintaining the
27 electronic drug offender tracking system in accordance with

1 this section shall not be civilly liable as a result of any
2 act or omission in carrying out the duties required by this
3 subsection and shall be immune from liability to any third
4 party unless the pharmacy has violated any provision of this
5 subsection in relation to a claim brought for such violation.

6 (j) (1) A drug offender convicted of violations of
7 this act, possession of a controlled substance, or drug
8 paraphernalia shall be prohibited from the retail or
9 prescription purchase of any ephedrine or pseudoephedrine,
10 their salts or optical isomers, or salts of optical isomers or
11 product for the entire seven years the person is required to
12 be included in the drug offender tracking system.

13 (2) A drug offender convicted of manufacture,
14 distribution, or trafficking of controlled substances shall be
15 prohibited from the retail or prescription purchase of any
16 ephedrine or pseudoephedrine, their salts or optical isomers,
17 or salts of optical isomers, or product for the entire ten
18 years the person is required to be included in the drug
19 offender tracking system.

20 (k) A drug offender who knowingly and unlawfully
21 purchases or attempts, solicits another, or conspires to
22 purchase ephedrine or pseudoephedrine, their salts or optical
23 isomers, or salts of optical isomers or product in violation
24 of this section, is guilty of a Class A misdemeanor, except
25 upon a subsequent conviction, is guilty of a Class C felony.

26 Section 4. Although this bill would have as its
27 purpose or effect the requirement of a new or increased

1 expenditure of local funds, the bill is excluded from further
2 requirements and application under Amendment 621, now
3 appearing as Section 111.05 of the Official Recompilation of
4 the Constitution of Alabama of 1901, as amended, because the
5 bill defines a new crime or amends the definition of an
6 existing crime.

7 Section 5. The provisions of this act are severable.
8 If any part of this act is declared invalid or
9 unconstitutional, that declaration shall not affect the part
10 which remains.

11 Section 6. This act shall become effective
12 immediately following its passage and approval by the
13 Governor, or its otherwise becoming law.