

1 HB528
2 117769-5
3 By Representatives McDaniel, Robinson (O), McLaughlin,
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8 Buskey, Kennedy, Thigpen, Beasley, Harper, Bentley, Galliher,
9 McCampbell, Newton (D), Love, Barton, Davis, Gaston, Ison,
10 Warren, Fincher, Shiver, Knight, Graham, Fields, Page, Scott,
11 Sanderford and Hammon
12 RFD: Judiciary
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ENROLLED, An Act,

To amend Section 20-2-190, as last amended by Act 2009-283 (Acts 2009, p. 483) of the Code of Alabama 1975, regulating the sale of ephedrine and pseudoephedrine in over-the-counter products; to further regulate the sale; to provide for an on-line electronic verification system operated by the Alabama Criminal Justice Information Center without cost to the state or retailers; to further provide penalties; to revise membership on the Methamphetamine Abuse Task Force; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 20-2-190 as last amended by Act 2009-283 (Acts 2009, p. 483) of the Code of Alabama 1975, is amended to read as follows:

"§20-2-190.

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

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

3 "(2) Knowingly makes a false statement in a report
4 or record required by this article or the rules adopted
5 thereunder;

6 "(3) Is required by this article to have a listed
7 precursor chemical license or permit, and is a person as
8 defined by this article, and knowingly or deliberately fails
9 to obtain such a license or permit. An offense under this
10 subsection shall constitute a Class C felony.

11 "(b) Notwithstanding the provisions of Section
12 20-2-188, a person who possesses, sells, transfers, or
13 otherwise furnishes a listed precursor chemical or a product
14 containing a precursor chemical commits an offense if the
15 person possesses, sells, transfers, or furnishes the substance
16 with the knowledge or intent that the substance will be used
17 in the unlawful manufacture of a controlled substance. An
18 offense under this subsection shall constitute a Class B
19 felony.

20 "(c) (1) a. 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.

1 "b. All packages of tablets containing ephedrine or
2 pseudoephedrine ~~as the sole active ingredient~~ shall be stored
3 by retail establishments by:

4 "1. Placing the products behind a counter where the
5 public is not permitted; or

6 "2. Placing the products in a locked display case so
7 that a customer wanting access to the packages must ask a
8 store employee for assistance.

9 ~~"c. All packages of tablets containing ephedrine or
10 pseudoephedrine and other active ingredients shall be stored
11 by retail establishments by:~~

12 ~~"1. Placing the products behind a counter;~~

13 ~~"2. Placing the products under video surveillance
14 and retaining the data for 30 days; or~~

15 ~~"3. Placing the products in a locked display case so
16 that a customer wanting access to the package must ask a store
17 employee for assistance.~~

18 "(2) No person shall deliver ~~in any single~~
19 ~~over-the-counter sale more than two packages, or any number of~~
20 ~~packages, sell, or purchase products sold over-the-counter~~
21 that contain a combined total of more than ~~six~~ 3.6 grams of
22 ~~any product containing~~ per calendar day or more than nine
23 grams per 30 days, of ephedrine base or pseudoephedrine ~~as the~~
24 ~~sole active ingredient, or in combination with other active~~
25 ~~ingredients. A purchase of more than six grams of such a~~

1 ~~product by an individual within a 30-day period with intent to~~
2 ~~manufacture shall be unlawful~~ base. It shall not be a defense
3 under this subdivision if no money was exchanged during a
4 transaction that would otherwise be unlawful under this
5 subdivision.

6 "(3)a. Each pharmacy or retail establishment selling
7 an over-the-counter product in compliance with paragraph b. of
8 subdivision (1) shall require the purchaser of the product or
9 products to be at least 18 years of age, to provide
10 government-issued photographic identification of himself or
11 herself, and to sign a ~~special electronic or paper register~~
12 ~~which shall be maintained as a record of such a sale for~~
13 ~~inspection by any law enforcement officer or inspector of the~~
14 ~~Board of Pharmacy during normal business hours. In lieu of~~
15 ~~providing a photo identification, the purchaser may provide~~
16 ~~any two of the following forms of identification of himself or~~
17 ~~herself: A credit card, insurance card, Medicaid or Medicare~~
18 ~~card, or other government-issued identification card. A copy~~
19 ~~of the special register shall be maintained by the retail~~
20 ~~establishment for a minimum of 180 days~~ record of each
21 transaction. A record of each transaction shall include the
22 name and address of the purchaser, the date and time of the
23 sale, the name of the product being sold, as well as the total
24 quantity in grams, of ephedrine or pseudoephedrine being sold.
25 The system required pursuant to this section shall be

1 available to the state and to retailers accessing the system
2 without costs. Effective January 1, 2011, provided a system is
3 available to the state without cost to the state or retailers
4 for accessing the system, before completing a sale of a
5 product covered by this section, a retailer shall submit the
6 required information to the electronic sales tracking system
7 established under subdivision (1) of subsection (h). The
8 seller shall not complete the sale if the system generates a
9 stop sale alert except when the seller follows the procedure
10 described under subsection (h) for overriding the stop sale
11 alert when the seller has fear of bodily harm. Any seller who
12 fails to comply with this subdivision shall be guilty of a
13 Class C misdemeanor upon a first offense, a Class A
14 misdemeanor on a second offense, and a Class C felony on a
15 third or subsequent offense, except that sellers who exercise
16 the override feature described under subdivision (3) of
17 subsection (h) when a stop sale alert is generated shall not
18 be subject to misdemeanor or felony charges. Absent
19 negligence, wantonness, recklessness, or deliberate
20 misconduct, any retailer maintaining the ~~special register~~
21 electronic sales tracking system in accordance with this
22 subdivision shall not be civilly liable as a result of any act
23 or omission in carrying out the duties required by this
24 subsection and shall be immune from liability to any third
25 party unless the retailer has violated any provision of this

1 subsection in relation to a claim brought for such violation.
2 Any excessive or suspicious sales of such a product by any
3 wholesaler, manufacturer, or repackager as defined in Section
4 34-23-1 shall be reported to the Board of Pharmacy.

5 "b. If a pharmacy or retail establishment selling an
6 over-the-counter product in compliance with paragraph b. of
7 subdivision (1) experiences mechanical or electronic failure
8 of the electronic sales tracking system and is unable to
9 comply with paragraph a. of this subdivision, the pharmacy or
10 retail establishment shall maintain a written log or an
11 alternative electronic recordkeeping mechanism until the
12 pharmacy or retail establishment is able to comply with
13 paragraph a. of this subdivision.

14 "c. A pharmacy or retail establishment selling an
15 over-the-counter product in compliance with paragraph b. of
16 subdivision (1) may seek an exemption from submitting
17 transactions to the electronic sales tracking system in
18 compliance with this subdivision in writing to the Alabama
19 Alcoholic Beverage Control Board stating the reasons therefor.
20 The board may grant an exemption for good cause shown, but in
21 no event shall such exemption exceed 180 days. Any pharmacy or
22 retail establishment that receives an exemption shall maintain
23 the required log information in another format and shall
24 require the purchaser to provide the information required
25 under paragraph a. of this subdivision before completion of

1 any sale. The required sales records shall be maintained as a
 2 record of each sale for inspection by any law enforcement
 3 officer or inspector of the Board of Pharmacy during normal
 4 business hours.

5 "(4) This subsection does not apply to the
 6 ~~following:~~ products dispensed pursuant to a legitimate
 7 prescription.

8 ~~"a. Pediatric products labeled pursuant to federal~~
 9 ~~regulation primarily intended for administration to children~~
 10 ~~under 12 years of age according to label instructions.~~

11 ~~"b. Products that the Alabama State Board of~~
 12 ~~Pharmacy, upon application of a manufacturer, exempts because~~
 13 ~~the product is formulated in such a way as to effectively~~
 14 ~~prevent the conversion of the active ingredient into~~
 15 ~~methamphetamine, or its salts or precursors.~~

16 ~~"c. Products dispensed pursuant to a legitimate~~
 17 ~~prescription.~~

18 ~~"d. Any compound, mixture, or preparation which is~~
 19 ~~in liquid, liquid capsule, or gel capsule form if ephedrine or~~
 20 ~~pseudoephedrine is not the only active ingredient.~~

21 "(5) This subsection shall preempt all local
 22 ordinances or regulations governing the ~~possession by~~
 23 ~~individuals or sale by a retail distributor~~ sale or purchase
 24 of over-the-counter products containing ephedrine or
 25 pseudoephedrine.

1 "(6) A retailer who is the general owner or operator
2 of an establishment where ephedrine or pseudoephedrine
3 products are available for sale shall not be penalized
4 pursuant to this section for conduct of an employee if the
5 retailer documents that an employee training program was
6 conducted by or approved by the Alabama ~~Methamphetamine~~ Drug
7 Abuse Task Force pursuant to subsection (g).

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

13 "(d) Beginning October 1, 2005, any wholesaler,
14 manufacturer, or repackager of drug products as defined in
15 Section 34-23-1, other than a wholesaler, manufacturer, or
16 repackager licensed by the Board of Pharmacy, shall obtain a
17 registration annually from the Alcoholic Beverage Control
18 Board which may promulgate and implement administrative rules
19 for the registrations. ~~Any~~ Beginning October 1, 2010, any
20 wholesaler, manufacturer, or repackager shall keep complete
21 records of all sales and transactions involving a listed
22 precursor chemical or a product containing a precursor
23 chemical including the names of all parties involved in the
24 transaction ~~and amount,~~ the name of the products being sold,
25 as well as the total quantity in grams, of the precursor

1 chemical or product involved. Any wholesaler, manufacturer, or
2 repackager selling a listed precursor chemical or product to
3 an individual shall require the purchaser of the product or
4 products to be at least 18 years of age, and to provide
5 government-issued photographic identification of himself or
6 herself. The records shall be maintained for at least ~~12~~ 36
7 months and the records shall be available for inspection by
8 any law enforcement officer or inspector of the Board of
9 Pharmacy during normal business hours.

10 "(e) Beginning October 1, 2005, every retailer of
11 ephedrine or pseudoephedrine, or a product containing
12 ephedrine or pseudoephedrine, other than a retailer licensed
13 by the Board of Pharmacy, is required to be registered with
14 the Alcoholic Beverage Control Board to lawfully sell
15 ephedrine or pseudoephedrine products to consumers. ~~A retailer~~
16 ~~that requests a waiver of registration stating it will sell~~
17 ~~only ephedrine or pseudoephedrine products listed in~~
18 ~~paragraphs a., b., or d. of subdivision (4) of subsection (c),~~
19 ~~shall be exempt from registration.~~

20 "(f) In addition to any other penalty that may be
21 provided, a sale of ephedrine or pseudoephedrine by a
22 wholesaler, manufacturer, repackager, or retailer without a
23 license as required by subsection (d) or (e) is a Class A
24 misdemeanor. In addition to any other penalty that may be
25 provided, a sale of ephedrine or pseudoephedrine in violation

1 of this section by a wholesaler, manufacturer, repackager, or
2 retailer who is licensed as required by subsection (d) or (e)
3 shall result in cancellation of the required registration and
4 forfeiture of the right to sell the products for at least one
5 year or longer as determined by the Alcoholic Beverage Control
6 Board.

7 "(g) (1) The Alabama ~~Methamphetamine~~ Drug Abuse Task
8 Force is ~~created to develop education and training programs~~
9 ~~that will curb the abuse of methamphetamine precursors used to~~
10 ~~make methamphetamine, and curb the use of methamphetamine in~~
11 ~~the in the State of Alabama.~~ established and given the
12 following authority:

13 "a. Develop education and training programs that
14 will curb the abuse of methamphetamine precursors used to make
15 methamphetamine or other illegal or abused drugs in the State
16 of Alabama. These programs shall be targeted for employees of
17 establishments where ephedrine or pseudoephedrine products are
18 available for sale and may further serve to educate and inform
19 the public. The programs shall be administered by the
20 Alcoholic Beverage Control Board in conjunction with its
21 program to restrict access to tobacco products by minors
22 pursuant to Chapter 11, Title 28.

23 "b. Advise the ABC Board regarding its
24 responsibilities prescribed in this article.

1 "c. Report to the Legislature as requested on the
2 state of abuse and misuse of drugs and related precursors in
3 Alabama and make recommendations regarding changes to the law
4 and public policy that may aid in curbing such abuse and
5 misuse.

6 "(2) The task force shall consist of the following
7 members :

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

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

11 "~~c. A representative of the Senate as appointed by~~
12 ~~the President Pro Tempore of the Senate.~~

13 "~~d. A representative of the House of Representatives~~
14 ~~as appointed by the Speaker of the House of Representatives.~~

15 "~~e. c. The Director of the Alcoholic Beverage~~
16 ~~Control Board, or his or her designee.~~

17 "~~d. c.~~ A representative appointed by the District
18 Attorney's Association.

19 "~~e. d.~~ A member of a regional county drug task force
20 as appointed by the District Attorney's Association.

21 "~~f. e.~~ The Director of the Department of Public
22 Safety, or his or her designee.

23 "~~g. f.~~ A representative appointed by the Chiefs of
24 Police Association.

1 ~~"h. g. A member of a regional county drug task force~~
2 ~~as appointed by the Chiefs of Police Association.~~

3 ~~"i. h. A representative appointed by the Sheriff's~~
4 ~~Association.~~

5 ~~"j. i. A representative appointed by the Narcotics~~
6 ~~Officers Association.~~

7 ~~"(2)(3) The representative of the Alcoholic Beverage~~
8 ~~Control Board membership shall serve as select a chair on a~~
9 ~~bi-annual basis.~~

10 ~~"(3)(4) The membership of the task force shall be~~
11 ~~inclusive and reflect the racial, gender, geographic,~~
12 ~~urban/rural, and economic diversity of the state. The board~~
13 ~~shall annually report to the Legislature by the second~~
14 ~~legislative day to what extent the board is complying with~~
15 ~~this diversity provision.~~

16 ~~"(4)(5) The chair of the task force shall be~~
17 ~~responsible for the conduct of the meetings and any~~
18 ~~correspondence derived therefrom.~~

19 ~~"(5)(6) The task force shall develop training and~~
20 ~~education programs targeted for employees of establishments~~
21 ~~where ephedrine or pseudoephedrine products are available for~~
22 ~~sale and the programs shall be administered by the Alcoholic~~
23 ~~Beverage Control Board in conjunction with its program to~~
24 ~~restrict access to tobacco products by minors pursuant to~~
25 ~~Chapter 11, Title 28. The task force may avail itself of any~~

1 ~~advisory information as needed to develop the training and~~
2 ~~information programs.~~ The chair of the task force shall call
3 an organizational meeting of the task force within ~~30~~ 60 days
4 of July 1, ~~2005~~ 2010, and the task force shall report its
5 meeting schedule and procedural rules to the Clerk of the
6 House of Representatives and the Secretary of the Senate
7 within 10 days of the meeting. ~~The task force shall collect~~
8 ~~data related to the effectiveness of its training and~~
9 ~~education programs and shall submit a report to the Secretary~~
10 ~~of the Senate and Clerk of the House no later than December 31~~
11 ~~of each year~~ The task force shall instruct the Alabama
12 Criminal Justice Information Center regarding the creation of
13 a drug abuse information system to further the mission of the
14 task force and assist law enforcement in the prevention of
15 illegal drug activity. This system shall include, but not be
16 limited to, data regarding illegal drug manufacture,
17 trafficking, distribution, and usage trends across the state.
18 This information shall be made available and be in a form and
19 method which will enable the task force to have an accurate
20 and detailed understanding of the nature of drug abuse and the
21 geographical impact of the various abused drugs in Alabama.

22 ~~"(6)(7)~~ The task force may expend any funds from any
23 source, including, but not limited to, donations, grants, and
24 appropriations of public funds received for purposes of this
25 subsection.

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

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

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

24 "b. Pursuant to a subpoena.

1 "(3) This database established pursuant to this
2 subsection shall be capable of generating a stop sale alert,
3 which shall be a notification that completion of the sale
4 would result in the seller or purchaser violating the quantity
5 limits set forth in subdivision (2) of subsection (c) of this
6 section. The system shall contain an override function for use
7 by a dispenser of ephedrine or pseudoephedrine who has a
8 reasonable fear of imminent bodily harm. Each instance in
9 which the override function is utilized shall be logged by the
10 system."

11 Section 2. No function or duties of the
12 Methamphetamine Abuse Task Force shall be the responsibility
13 or under the purview of the Governor of Alabama.

14 Section 3. This act shall become effective
15 immediately following its passage and approval by the
16 Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 23-FEB-10, as amended.

Greg Pappas
Clerk

Senate

09-MAR-10

Passed