

1 SB407  
2 117769-2  
3 By Senator Barron  
4 RFD: Health  
5 First Read: 11-FEB-10

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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. The bill would require  
16 retailers to verify that the purchaser of a product  
17 is not in violation of the law through an on-line  
18 electronic verification system which system would  
19 be operated by the Alabama Criminal Justice  
20 Information Center without cost to the state or to  
21 the retailers. The bill would provide penalties for  
22 violations and would revise the membership of the  
23 Alabama Methamphetamine Abuse Task Force.

24 Amendment 621 of the Constitution of Alabama  
25 of 1901, now appearing as Section 111.05 of the  
26 Official ReCompilation of the Constitution of  
27 Alabama of 1901, as amended, prohibits a general

1 law whose purpose or effect would be to require a  
2 new or increased expenditure of local funds from  
3 becoming effective with regard to a local  
4 governmental entity without enactment by a 2/3 vote  
5 unless: it comes within one of a number of  
6 specified exceptions; it is approved by the  
7 affected entity; or the Legislature appropriates  
8 funds, or provides a local source of revenue, to  
9 the entity for the purpose.

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

17  
18 A BILL  
19 TO BE ENTITLED  
20 AN ACT  
21

22 To amend Section 20-2-190, as last amended by Act  
23 2009-283 (Acts 2009, p. 483) of the Code of Alabama 1975,  
24 regulating the sale of ephedrine and pseudoephedrine in  
25 over-the-counter products; to further regulate the sale; to  
26 provide for an on-line electronic verification system operated  
27 by the Alabama Criminal Justice Information Center without

1 cost to the state or retailers; to further provide penalties;  
2 to revise membership on the Methamphetamine Abuse Task Force;  
3 and in connection therewith would have as its purpose or  
4 effect the requirement of a new or increased expenditure of  
5 local funds within the meaning of Amendment 621 of the  
6 Constitution of Alabama of 1901, now appearing as Section  
7 111.05 of the Official Recompilation of the Constitution of  
8 Alabama of 1901, as amended.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Section 20-2-190 as last amended by Act  
11 2009-283 (Acts 2009, p. 483) of the Code of Alabama 1975, is  
12 amended to read as follows:

13 "§20-2-190.

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

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

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

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

1           "(b) Notwithstanding the provisions of Section  
2 20-2-188, a person who possesses, sells, transfers, or  
3 otherwise furnishes a listed precursor chemical or a product  
4 containing a precursor chemical commits an offense if the  
5 person possesses, sells, transfers, or furnishes the substance  
6 with the knowledge or intent that the substance will be used  
7 in the unlawful manufacture of a controlled substance. An  
8 offense under this subsection shall constitute a Class B  
9 felony.

10           "(c) (1) a. Products whose sole active ingredient is  
11 ephedrine or pseudoephedrine in strength of 30 mg. or more per  
12 tablet cannot be offered for retail sale loose in bottles, but  
13 must be sold only in blister packages.

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

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

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

22           ~~"c. All packages of tablets containing ephedrine or  
23 pseudoephedrine and other active ingredients shall be stored  
24 by retail establishments by:~~

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

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

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

4           ~~"(2) No person shall deliver in any single~~  
5 ~~over-the-counter sale more than two packages, or any number of~~  
6 ~~packages, sell, or purchase products sold over-the-counter~~  
7 ~~that contain a combined total of more than six 3.6 grams of~~  
8 ~~any product containing per calendar day or more than nine~~  
9 ~~grams per 30 days, of ephedrine base or pseudoephedrine as the~~  
10 ~~sole active ingredient, or in combination with other active~~  
11 ~~ingredients. A purchase of more than six grams of such a~~  
12 ~~product by an individual within a 30-day period with intent to~~  
13 ~~manufacture shall be unlawful base. It shall not be a defense~~  
14 ~~under this subdivision if no money was exchanged during a~~  
15 ~~transaction that would otherwise be unlawful under this~~  
16 ~~subdivision.~~

17           ~~"(3)a. Each pharmacy or retail establishment selling~~  
18 ~~an over-the-counter product in compliance with paragraph b. of~~  
19 ~~subdivision (1) shall require the purchaser of the product or~~  
20 ~~products to be at least 18 years of age, to provide~~  
21 ~~government-issued photographic identification of himself or~~  
22 ~~herself, and to sign a special electronic or paper register~~  
23 ~~which shall be maintained as a record of such a sale for~~  
24 ~~inspection by any law enforcement officer or inspector of the~~  
25 ~~Board of Pharmacy during normal business hours. In lieu of~~  
26 ~~providing a photo identification, the purchaser may provide~~  
27 ~~any two of the following forms of identification of himself or~~

1 herself: A credit card, insurance card, Medicaid or Medicare  
2 card, or other government-issued identification card. A copy  
3 of the special register shall be maintained by the retail  
4 establishment for a minimum of 180 days record of each  
5 transaction. A record of each transaction shall include the  
6 name and address of the purchaser, the date and time of the  
7 sale, the name of the product being sold, as well as the total  
8 quantity in grams, of ephedrine or pseudoephedrine being sold.  
9 The system required pursuant to this section shall be  
10 available to the state and to retailers accessing the system  
11 without costs. Effective January 1, 2011, provided a system is  
12 available to the state without cost to the state or retailers  
13 for accessing the system, before completing a sale of a  
14 product covered by this section, a retailer shall submit the  
15 required information to the electronic sales tracking system  
16 established under subdivision (1) of subsection (h). The  
17 seller shall not complete the sale if the system generates a  
18 stop sale alert except when the seller follows the procedure  
19 described under subsection (h) for overriding the stop sale  
20 alert when the seller has fear of bodily harm. Any seller who  
21 fails to comply with this subdivision shall be guilty of a  
22 Class C misdemeanor upon a first offense, a Class A  
23 misdemeanor on a second offense, and a Class C felony on a  
24 third or subsequent offense, except that sellers who exercise  
25 the override feature described under subdivision (3) of  
26 subsection (h) when a stop sale alert is generated shall not  
27 be subject to misdemeanor or felony charges. Absent

1 negligence, wantonness, recklessness, or deliberate  
2 misconduct, any retailer maintaining the ~~special register~~  
3 electronic sales tracking system in accordance with this  
4 subdivision shall not be civilly liable as a result of any act  
5 or omission in carrying out the duties required by this  
6 subsection and shall be immune from liability to any third  
7 party unless the retailer has violated any provision of this  
8 subsection in relation to a claim brought for such violation.  
9 Any excessive or suspicious sales of such a product by any  
10 wholesaler, manufacturer, or repackager as defined in Section  
11 34-23-1 shall be reported to the Board of Pharmacy.

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

21 "c. A pharmacy or retail establishment selling an  
22 over-the-counter product in compliance with paragraph b. of  
23 subdivision (1) may seek an exemption from submitting  
24 transactions to the electronic sales tracking system in  
25 compliance with this subdivision in writing to the Alabama  
26 Alcoholic Beverage Control Board stating the reasons therefor.  
27 The board may grant an exemption for good cause shown, but in



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

10 "(4) This subsection does not apply to the  
11 following: products dispensed pursuant to a legitimate  
12 prescription.

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

16 ~~"b. Products that the Alabama State Board of~~  
17 ~~Pharmacy, upon application of a manufacturer, exempts because~~  
18 ~~the product is formulated in such a way as to effectively~~  
19 ~~prevent the conversion of the active ingredient into~~  
20 ~~methamphetamine, or its salts or precursors.~~

21 ~~"c. Products dispensed pursuant to a legitimate~~  
22 ~~prescription.~~

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

26 "(5) This subsection shall preempt all local  
27 ordinances or regulations governing the possession by

1 ~~individuals or sale by a retail distributor~~ sale or purchase  
2 of over-the-counter products containing ephedrine or  
3 pseudoephedrine.

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

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

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

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

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

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

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

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

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

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

24 "c. Report to the Legislature as requested on the  
25 state of abuse and misuse of drugs and related precursors in  
26 Alabama and make recommendations regarding changes to the law

1 and public policy that may aid in curbing such abuse and  
2 misuse.

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

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

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

8 ~~"c. A representative of the Senate as appointed by~~  
9 ~~the President Pro Tempore of the Senate.~~

10 ~~"d. A representative of the House of Representatives~~  
11 ~~as appointed by the Speaker of the House of Representatives.~~

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

14 "d. A representative appointed by the District  
15 Attorney's Association.

16 "e. A member of a regional county drug task force as  
17 appointed by the District Attorney's Association.

18 "f. The Director of the Department of Public Safety,  
19 or his or her designee.

20 "g. A representative appointed by the Chiefs of  
21 Police Association.

22 "h. A member of a regional county drug task force as  
23 appointed by the Chiefs of Police Association.

24 "i. A representative appointed by the Sheriff's  
25 Association.

26 "j. A representative appointed by the Narcotics  
27 Officers Association.

1           ~~"(2)(3) The representative of the Alcoholic Beverage~~  
2     ~~Control Board membership shall serve as select a chair on a~~  
3     ~~bi-annual basis.~~

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

10          ~~"(4)(5) The chair of the task force shall be~~  
11     ~~responsible for the conduct of the meetings and any~~  
12     ~~correspondence derived therefrom.~~

13          ~~"(5)(6) The task force shall develop training and~~  
14     ~~education programs targeted for employees of establishments~~  
15     ~~where ephedrine or pseudoephedrine products are available for~~  
16     ~~sale and the programs shall be administered by the Alcoholic~~  
17     ~~Beverage Control Board in conjunction with its program to~~  
18     ~~restrict access to tobacco products by minors pursuant to~~  
19     ~~Chapter 11, Title 28. The task force may avail itself of any~~  
20     ~~advisory information as needed to develop the training and~~  
21     ~~information programs. The chair of the task force shall call~~  
22     ~~an organizational meeting of the task force within 30 60 days~~  
23     ~~of July 1, 2005 2010, and the task force shall report its~~  
24     ~~meeting schedule and procedural rules to the Clerk of the~~  
25     ~~House of Representatives and the Secretary of the Senate~~  
26     ~~within 10 days of the meeting. The task force shall collect~~  
27     ~~data related to the effectiveness of its training and~~

1 education programs and shall submit a report to the Secretary  
2 of the Senate and Clerk of the House no later than December 31  
3 of each year The task force shall instruct the Alabama  
4 Criminal Justice Information Center regarding the creation of  
5 a drug abuse information system to further the mission of the  
6 task force and assist law enforcement in the prevention of  
7 illegal drug activity. This system shall include, but not be  
8 limited to, data regarding illegal drug manufacture,  
9 trafficking, distribution, and usage trends across the state.  
10 This information shall be made available and be in a form and  
11 method which will enable the task force to have an accurate  
12 and detailed understanding of the nature of drug abuse and the  
13 geographical impact of the various abused drugs in Alabama.

14 "(6)(7) The task force may expend any funds from any  
15 source, including, but not limited to, donations, grants, and  
16 appropriations of public funds received for purposes of this  
17 subsection.

18 "(h)(1) The Alabama Criminal Justice Information  
19 Center may implement a real-time electronic sales tracking  
20 system to monitor the over-the-counter, nonprescription sale  
21 of products in this state containing any detectable quantity  
22 of ephedrine or pseudoephedrine, their salts or optical  
23 isomers, or salts of optical isomers, provided that such  
24 system is available to the state without cost to the state or  
25 retailers for accessing the system. The electronic sales  
26 tracking system shall have the technological capability to  
27 receive pseudoephedrine sales data from retail establishments

1 submitted pursuant to this subsection. The electronic sales  
2 tracking system shall be capable of bridging with existing and  
3 future operational systems used by retail at no cost to such  
4 retail establishment. The Alabama Criminal Justice Information  
5 Center may enter into a public-private partnership, through a  
6 memorandum of understanding or similar arrangement, to make  
7 the system available to retailers and law enforcement in the  
8 state.

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

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

13 "b. Pursuant to a subpoena.

14 "(3) This database established pursuant to this  
15 subsection shall be capable of generating a stop sale alert,  
16 which shall be a notification that completion of the sale  
17 would result in the seller or purchaser violating the quantity  
18 limits set forth in subdivision (2) of subsection (c) of this  
19 section. The system shall contain an override function for use  
20 by a dispenser of ephedrine or pseudoephedrine who has a  
21 reasonable fear of imminent bodily harm. Each instance in  
22 which the override function is utilized shall be logged by the  
23 system."

24 Section 2. This act shall become effective  
25 immediately following its passage and approval by the  
26 Governor, or its otherwise becoming law.