

1 HB363
2 136149-2
3 By Representative Galliher
4 RFD: Health
5 First Read: 21-FEB-12

1 ENGROSSED

2
3
4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 To amend Sections 13A-12-212, 13A-12-260, 20-2-72,
9 and 20-2-190, Code of Alabama 1975; to add Section 20-2-190.2
10 to the Code of Alabama 1975; to further regulate the sale of
11 over-the-counter products containing certain quantities of
12 ephedrine or pseudoephedrine within certain periods of time;
13 to enhance existing criminal penalties for violations and to
14 provide additional criminal penalties; to revise the
15 membership of the Alabama Drug Abuse Task Force and to require
16 a report to the Legislature; to require the Alabama Criminal
17 Justice Information Center to implement an electronic drug
18 offender tracking system to catalogue all criminal convictions
19 in this state and other states of persons with certain felony
20 and misdemeanor convictions related to methamphetamine; to
21 provide specific criminal penalties for certain uses of drug
22 paraphernalia in violation of the controlled substances laws
23 of this state; and in connection therewith would have as its
24 purpose or effect the requirement of a new or increased
25 expenditure of local funds within the meaning of Amendment 621
26 of the Constitution of Alabama of 1901, now appearing as

1 Section 111.05 of the Official ReCompilation of the
2 Constitution of Alabama of 1901, as amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

5 (1) The danger of methamphetamine manufacture to the
6 public and especially to law enforcement involved in the
7 investigation and clean-up of clandestine methamphetamine
8 laboratories is of paramount concern.

9 (2) Ephedrine or pseudoephedrine, their salts or
10 optical isomers, or salts of optical isomers are the essential
11 ingredient in the manufacture of methamphetamine.

12 (b) It is the intent of the Legislature to prevent
13 and criminally sanction the practice of "smurfing." Smurfing
14 is the common name for the act of a person within the state or
15 from other states, acting alone or in concert, at the
16 direction or behest of another to circumvent the provisions of
17 state law by purchasing multiple quantities of pseudoephedrine
18 and ephedrine compounds for the intent of combining or using
19 such quantities for the purposes of manufacturing or
20 attempting to manufacture methamphetamine.

21 Section 2. Sections ~~13A-12-260~~ 13A-12-212,
22 13A-12-260, ~~and 20-2-290,~~ 20-2-72, and 20-2-190, Code of
23 Alabama 1975, are amended to read as follows:

24 "13A-12-212

25 "(a) A person commits the crime of unlawful
26 possession of controlled substance if:

1 "(1) Except as otherwise authorized, he or she
2 possesses a controlled substance enumerated in Schedules I
3 through V.

4 "(2) He or she obtains by fraud, deceit,
5 misrepresentation, or subterfuge or by the alteration of a
6 prescription or written order or by the concealment of a
7 material fact or by the use of a false name or giving a false
8 address, a controlled substance enumerated in Schedules I
9 through V or a precursor chemical enumerated in Section
10 20-2-181.

11 "(b) Unlawful possession of a controlled substance
12 is a Class C felony.

13 §13A-12-260.

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

25 "(1) Kits used, intended for use, or designed for
26 use in planting, propagating, cultivating, growing, or

1 harvesting of any species of plant which is a controlled
2 substance or from which a controlled substance can be derived;

3 "(2) Kits used, intended for use, or designed for
4 use in manufacturing, compounding, converting, producing,
5 processing, or preparing controlled substances;

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

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

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

15 "(6) Dilutants and adulterants, such as quinine
16 hydrochloride, mannitol, mannite, dextrose and lactose, used,
17 intended for use, or designed for use in cutting controlled
18 substances;

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

22 "(8) Blenders, bowls, containers, spoons and mixing
23 devices used, intended for use, or designed for use in
24 compounding controlled substances;

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

1 "(10) Containers and other objects used, intended
2 for use, or designed for use in storing or concealing
3 controlled substances;

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

7 "(12) Objects used, intended for use, or designed
8 for use in ingesting, inhaling, or otherwise introducing
9 marihuana, tetrahydro cannabinols, cocaine, hashish, or
10 hashish oil into the human body, such as:

11 "a. Metal, wooden, acrylic, glass, stone, plastic,
12 or ceramic pipes with or without screens, permanent screens,
13 hashish heads, or punctured metal bowls;

14 "b. Water pipes;

15 "c. Carburetion tubes and devices;

16 "d. Smoking and carburetion masks;

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

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

21 "g. Chamber pipes;

22 "h. Carburetor pipes;

23 "i. Electric pipes;

24 "j. Air-driven pipes;

25 "k. Chillums;

26 "l. Bongs;

27 "m. Ice pipes or chillers;

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

5 "(b) Factors in determining whether object is drug
6 paraphernalia. - In determining whether an object is drug
7 paraphernalia, a court or other authority shall consider, in
8 addition to all other logically relevant factors, the
9 following:

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

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

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

18 "(4) The existence of any residue of controlled
19 substances on the object;

20 "(5) Direct or circumstantial evidence of the intent
21 of an owner, or of anyone in control of the object, to deliver
22 it to persons whom he knows intend to use the object to
23 facilitate a violation of the controlled substances laws of
24 this state; the innocence of an owner, or of anyone in control
25 of the object, as to a direct violation of such laws shall not
26 prevent a finding that the object is intended for use, or
27 designed for use as drug paraphernalia;

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

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

5 "(8) National and local advertising concerning its
6 use;

7 "(9) The manner in which the object is displayed for
8 sale;

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

13 "(11) Direct or circumstantial evidence of the ratio
14 of sales of the object or objects to the total sales of the
15 business enterprise;

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

18 "(13) Expert testimony concerning its use.

19 "(c) Use or possession with intent to use. - It
20 shall be unlawful for any person to use, or to possess with
21 intent to use, or to use to inject, ingest, inhale or
22 otherwise introduce into the human body, drug paraphernalia to
23 plant, propagate, cultivate, grow, harvest, ~~manufacture,~~
24 compound, convert, produce, process, prepare, test, analyze,
25 pack, repack, store, contain or conceal a controlled substance
26 in violation of the controlled substances laws of this state.
27 Any person who violates this subsection is guilty of a Class A

1 misdemeanor and upon conviction shall be punished as
2 prescribed by law.

3 "(d) (1) It shall be unlawful for any person to use,
4 deliver, or sell, possess with intent to deliver or sell, or
5 manufacture with intent to deliver or sell, or to possess with
6 intent to use, drug paraphernalia to manufacture a controlled
7 substance in violation of the controlled substances laws of
8 this state.

9 "(2) Any person who violates this subsection is
10 guilty of a Class C felony. If a person is in violation of
11 this subsection and is in possession of a firearm at the time
12 of the offense, the person shall be guilty of a Class B
13 felony.

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

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

1 prescribed by law. Any person convicted of violating this
2 subsection who previously has been convicted of violating
3 subdivision (2) of this subsection shall be subject to the
4 same penalties specified for subsequent violations of this
5 subsection.

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

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

16 "§20-2-72.

17 "(a) It is unlawful for any person:

18 "(1) To distribute as a registrant a controlled
19 substance classified in Schedules I or II, except pursuant to
20 an order form as required by Section 20-2-57;

21 "(2) To use in the course of the manufacture or
22 distribution of a controlled substance a registration number
23 which is fictitious, revoked, suspended, or issued to another
24 person;

25 "(3) To acquire or obtain possession of a controlled
26 substance or a precursor chemical enumerated in Section

1 20-2-181 by misrepresentation, fraud, forgery, deception, or
2 subterfuge;

3 "(4) To furnish false or fraudulent material
4 information in or omit any material information from any
5 application, report, or other document required to be kept or
6 filed under this chapter or any record required to be kept by
7 this chapter; or

8 "(5) To make, distribute, or possess any punch, die,
9 plate, stone, or other thing designed to print, imprint, or
10 reproduce the trademark, trade name, or other identifying
11 mark, imprint, or device of another or any likeness of any of
12 the foregoing upon any drug or container or labeling thereof
13 so as to render the drug a counterfeit substance.

14 "(b) Any person who violates this section is guilty
15 of a Class B felony, except that any person who violates
16 subdivision (a) (3) of this section is guilty of a Class C
17 felony.

18 §20-2-190.

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

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

24 "(2) Knowingly makes a false statement in a report
25 or record required by this article or the rules adopted
26 thereunder;

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

6 "(b) Notwithstanding the provisions of Section
7 20-2-188, a person who possesses, sells, transfers, or
8 otherwise furnishes or attempts to solicit another or
9 conspires to possess, sell, transfer, or otherwise furnish a
10 listed precursor chemical or a product containing a precursor
11 chemical or ephedrine or pseudoephedrine, their salts or
12 optical isomers, or salts of optical isomers commits an
13 offense if the person possesses, sells, transfers, or
14 furnishes the substance with the knowledge or intent that the
15 substance will be used in the unlawful manufacture of a
16 controlled substance. An offense under this subsection shall
17 constitute a Class B felony.

18 "(c) (1) ~~a.~~ It shall be unlawful for any person,
19 business, or entity to knowingly sell any ephedrine or
20 pseudoephedrine, their salts or optical isomers, or salts of
21 optical isomers unless sold from a pharmacy licensed by the
22 Alabama Board of Pharmacy. Any ephedrine or pseudoephedrine,
23 their salts or optical isomers, or salts of optical isomers
24 sold within a pharmacy must be sold by an individual licensed
25 as a pharmacist, a pharmacy technician licensed by the Alabama
26 Board of Pharmacy, or by an employee of the pharmacy under the
27 direct supervision and control of a licensed pharmacist.

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

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

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

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

13 "~~(2)~~(4) No person shall deliver, sell, or purchase
14 products sold over-the-counter that contain a combined total
15 of more than 3.6 grams per calendar day or more than ~~nine~~ 7.5
16 grams per 30 days, of ephedrine base or pseudoephedrine base.
17 It shall not be a defense under this subdivision if no money
18 was exchanged during a transaction that would otherwise be
19 unlawful under this subdivision.

20 "~~(3)~~(5)a. Each pharmacy ~~or retail establishment~~
21 selling an over-the-counter product in compliance with
22 paragraph b. of this subdivision ~~(3)~~ shall require the
23 purchaser of the product or products to be at least 18 years
24 of age, to provide ~~government-issued photographic~~
25 ~~identification of himself or herself~~ a valid, unsuspended
26 driver's license or nondriver identification card issued by
27 this state, a valid, unsuspended driver's license or nondriver

1 identification card issued by another state, a United States
2 Uniformed Services Privilege and Identification Card, or a
3 United States or foreign passport, and to sign a record of
4 each transaction. A record of each transaction shall include
5 the magnetic transfer or electronic entry of information data
6 from the identification card into the system, as well as the
7 type of identification card used, including the number, name,
8 date of birth, and current, valid address of the purchaser,
9 the date and time of the sale, the name of the product being
10 sold, as well as the total quantity in grams, of ephedrine or
11 pseudoephedrine being sold. The system required pursuant to
12 this section shall be available to the state and to ~~retailers~~
13 pharmacies accessing the system without cost. Effective
14 January 1, 2011, provided a system is available to the state
15 without cost to the state or ~~retailers~~ pharmacies for
16 accessing the system, before completing a sale of a product
17 covered by this section, a ~~retailer~~ pharmacy shall submit the
18 required information to the electronic sales tracking system
19 established under subdivision (1) of subsection ~~(h)~~ (i). The
20 seller shall not complete the sale if the system generates a
21 stop sale alert except when the seller follows the procedure
22 described under subsection ~~(h)~~ (i) for overriding the stop
23 sale alert when the seller has fear of bodily harm. Any seller
24 who fails to comply with this subdivision shall be guilty of a
25 ~~Class C misdemeanor~~ Class A misdemeanor upon a first offense,
26 ~~a Class A misdemeanor on a second offense,~~ and a Class C
27 felony on a ~~third~~ second or subsequent offense, except that

1 sellers who exercise the override feature described under
2 subdivision (3) of subsection ~~(h)~~ (i) when a stop sale alert
3 is generated shall not be subject to misdemeanor or felony
4 charges. Absent negligence, wantonness, recklessness, or
5 deliberate misconduct, any retailer maintaining the electronic
6 sales tracking system in accordance with this subdivision
7 shall not be civilly liable as a result of any act or omission
8 in carrying out the duties required by this subsection and
9 shall be immune from liability to any third party unless the
10 retailer has violated any provision of this subsection in
11 relation to a claim brought for such violation. Any excessive
12 or suspicious sales of such a product by any wholesaler,
13 manufacturer, or repackager as defined in Section 34-23-1
14 shall be reported to the Alcohol Beverage Control Board and
15 the Board of Pharmacy. Any person who fails to comply with
16 this subdivision shall be guilty of a Class A misdemeanor upon
17 a first offense, and a Class C felony upon a second or
18 subsequent offense.

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

1 ~~retail establishment~~ is able to comply with paragraph a. of
2 this subdivision.

3 ~~"c. A pharmacy or retail establishment selling an~~
4 ~~over-the-counter product in compliance with paragraph b. of~~
5 ~~subdivision (1) may seek an exemption from submitting~~
6 ~~transactions to the electronic sales tracking system in~~
7 ~~compliance with this subdivision in writing to the Alabama~~
8 ~~Alcoholic Beverage Control Board stating the reasons therefor.~~
9 ~~The board may grant an exemption for good cause shown, but in~~
10 ~~no event shall such exemption exceed 180 days. Any pharmacy or~~
11 ~~retail establishment that receives an exemption shall maintain~~
12 ~~the required log information in another format and shall~~
13 ~~require the purchaser to provide the information required~~
14 ~~under paragraph a. of this subdivision before completion of~~
15 ~~any sale. The required sales records shall be maintained as a~~
16 ~~record of each sale for inspection by any law enforcement~~
17 ~~officer or inspector of the Board of Pharmacy during normal~~
18 ~~business hours.~~

19 ~~"(4)(6)~~ This subsection does not apply to products
20 dispensed pursuant to a legitimate prescription.

21 ~~"(5)(7)~~ This subsection shall preempt all local
22 ordinances or regulations governing the sale or purchase of
23 ~~over-the-counter~~ products containing ephedrine or
24 pseudoephedrine.

25 ~~"(6)(8)~~ A ~~retailer~~ pharmacist who is the general
26 owner or operator of an establishment where ephedrine or
27 pseudoephedrine products are available for sale shall not be

1 penalized pursuant to this section for conduct of an employee
2 if the retailer documents that an employee training program
3 was conducted by or approved by the Alabama Drug Abuse Task
4 Force (ADATF), pursuant to subsection ~~(g)~~ (h). As provided in
5 subsection (h), the Alabama Board of Pharmacy shall develop or
6 approve all training programs for those pharmacy employees
7 referenced in subdivision (1) and submit such programs to the
8 ADATF for approval. The ADATF must review any training
9 programs submitted by the Alabama Board of Pharmacy at its
10 next subsequent called or scheduled public meeting and within
11 7 days, report its decision in writing to the Alabama Board of
12 Pharmacy.

13 ~~"(7)(9)~~ A violation of ~~paragraph a. or b. of~~
14 ~~subdivision (1) or subdivision (2)~~ subdivision (1), (2), (3),
15 or (4) of this subsection shall constitute a Class ~~E~~ A
16 misdemeanor on a first offense and a Class C felony on
17 subsequent offenses. The violations shall be punishable as
18 provided by law.

19 "(d) Any person who resides within any state that
20 requires a prescription for any purchase of ephedrine or
21 pseudoephedrine, their salts or optical isomers, or salts of
22 optical isomers, or who presents a valid identification as
23 provided in subdivision (5) of subsection (c) from any state
24 that requires a prescription for any purchase of ephedrine or
25 pseudoephedrine, their salts or optical isomers, or salts of
26 optical isomers, may purchase those products only upon
27 presentation of a valid prescription for the ephedrine or

1 pseudoephedrine, their salts or optical isomers, or salts of
2 optical isomers. The electronic system established in the act
3 adding this subsection shall generate a stop sale and block
4 any purchase in violation of this subsection, absent a valid
5 lawful prescription.

6 ~~"(d)~~(e) Beginning October 1, 2005, any wholesaler,
7 manufacturer, or repackager of drug products as defined in
8 Section 34-23-1, other than a wholesaler, manufacturer, or
9 repackager licensed by the Board of Pharmacy, shall obtain a
10 registration annually from the Alcoholic Beverage Control
11 Board which may promulgate and implement administrative rules
12 for the registrations. Beginning October 1, 2010, any
13 wholesaler, manufacturer, or repackager shall keep complete
14 records of all sales and transactions involving a listed
15 precursor chemical or a product containing a precursor
16 chemical including the names of all parties involved in the
17 transaction, the name of the products being sold, as well as
18 the total quantity in grams, of the precursor chemical or
19 product involved. Any wholesaler, manufacturer, or repackager
20 selling a listed precursor chemical or product to an
21 individual shall require the purchaser of the product or
22 products to be at least 18 years of age and to provide
23 government-issued photographic identification of himself or
24 herself. The records shall be maintained for at least 36
25 months and the records shall be available for inspection by
26 any law enforcement officer or inspector of the Board of
27 Pharmacy during normal business hours. Failure to comply with

1 subsections (d) and (e) shall be a Class A misdemeanor for a
2 first offense and a Class C felony for a second or subsequent
3 offense.

4 "~~(e)~~(f) Beginning October 1, 2005, every retailer of
5 ephedrine or pseudoephedrine, or a product containing
6 ephedrine or pseudoephedrine, ~~other than a retailer licensed~~
7 ~~by the Board of Pharmacy~~, is required to be registered with
8 the Alcoholic Beverage Control Board to lawfully sell
9 ephedrine or pseudoephedrine products to consumers.

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

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

1 " ~~a. Develop~~ Approve or develop drug awareness,
2 enforcement, education, prevention, and training programs. The
3 programs shall be designed to that will curb the abuse of all
4 dangerous, illegal, or abused drugs, including but not limited
5 to, methamphetamine precursors, other key, critical, common
6 ingredients used to make methamphetamine, or other illegal or
7 abused drugs in the State of Alabama. These programs ~~shall~~ may
8 be targeted for, but not limited to, employees of
9 establishments where ephedrine or pseudoephedrine products or
10 other key or critical or common ingredients in the illegal
11 manufacture of methamphetamine or other illegal or dangerous
12 drugs are available for sale ~~and~~. Education, prevention, and
13 training programs also may be targeted to law enforcement,
14 prosecutors, the judiciary, students, or that may further
15 serve to protect, educate, and inform the public. The programs
16 ~~shall~~ may be administered by the Alcoholic Beverage Control
17 Board in conjunction with its program to restrict access to
18 tobacco products by minors pursuant to Chapter 11, Title 28.
19 The programs may be further administered by any law
20 enforcement drug abuse and violent crime task force, the
21 Alabama Department of Education, a licensed private drug
22 education or prevention entity approved by the ADATF, or any
23 other governmental or quasi-governmental agency or entity
24 partnering with the ADATF to serve the purposes of this
25 article. The Alabama Department of Public Health, ADATF, and
26 the Alabama State Board of Education, shall enter into a
27 memorandum of understanding to develop and implement the

1 training, education, or prevention programs referenced in this
2 section, and are authorized to expend any funds necessary to
3 further the requirements and objective of the ADATF and
4 subsection (h) or any other legitimate drug abuse prevention
5 or law enforcement purpose for the protection of the citizens
6 of this state.

7 "b. Advise the ABC Board, the Alabama Board of
8 Pharmacy, Alabama law enforcement, prosecutorial entities, or
9 other governmental or quasi-governmental agency or entity
10 partnering with the ADATF regarding its responsibilities
11 prescribed in this article.

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

1 1. Statistical data involving drug abuse, drug
2 crime, or drug related crime.

3 2. Efforts within the state involving education,
4 prevention, and treatment of drug addiction.

5 3. Critical needs of law enforcement.

6 4. Organized crime efforts in the area of drug
7 distribution, trafficking, manufacturing, or related criminal
8 activity.

9 5. Critical needs for prisons.

10 6. Prosecution entities and the courts.

11 7. Other critical threat assessments involving the
12 safety of the State of Alabama.

13 "(2) The task force shall consist of the following
14 members:

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

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

18 "c. A representative appointed by the District
19 Attorney's Association.

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

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

24 "f. A representative appointed by the Chiefs of
25 Police Association.

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

1 "h. A representative appointed by the Sheriff's
2 Association.

3 "i. A representative appointed by the Narcotics
4 Officers Association.

5 "j. A representative of the Alabama Association of
6 Pharmacists.

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

9 "l. A member or director of the Alabama Sentencing
10 Commission.

11 "m. The Chair of the Alabama Assistant District
12 Attorneys Association.

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

15 "o. A representative of the Alabama Retail
16 Association.

17 "p. A representative of the Alabama Administrative
18 Office of Courts.

19 "q. The Commissioner of the Alabama Department of
20 Corrections, or his or her designee.

21 "r. The State Superintendent of Education, or his or
22 her designee.

23 "s. A representative of the Commission of
24 Environmental Management.

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

1 "u. The State Health Officer, or his or her
2 designee.

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

5 "w. A representative of the mental illness and
6 substance abuse services of the Alabama Department of Mental
7 Health.

8 "x. The Director of the Office of Prosecution
9 Services, or his or her designee.

10 y. A representative of the Alabama Criminal Justice
11 Information Center.

12 z. A representative of the Board of Dental
13 Examiners.

14 aa. A representative of the Alcoholic Beverage
15 Control Board.

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

18 "(4) The membership of the task force shall be
19 inclusive and reflect the racial, gender, geographic,
20 urban/rural, and economic diversity of the state. ~~The board~~
21 ~~shall annually report to the Legislature by the second~~
22 ~~legislative day to what extent the board is complying with~~
23 ~~this diversity provision.~~

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

1 "(6) The chair of the task force shall call an
2 organizational meeting of the task force within 60 days of
3 July 1, 2010, and the task force shall report its meeting
4 schedule and procedural rules to the Clerk of the House of
5 Representatives and the Secretary of the Senate within 10 days
6 of the meeting. The task force shall instruct the Alabama
7 Criminal Justice Information Center regarding the creation of
8 a drug abuse information system, as well as a drug offender
9 tracking system pursuant to Section ~~20-2-190.1~~ 20-2-190.2, to
10 further the mission of the task force and assist law
11 enforcement in the prevention of illegal drug activity. This
12 system shall include, but not be limited to, data regarding
13 illegal drug manufacture, trafficking, distribution, and usage
14 trends across the state. This information shall be made
15 available and be in a form and method which will enable the
16 task force to have an accurate and detailed understanding of
17 the nature of drug abuse and the geographical impact of the
18 various abused drugs in Alabama.

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

23 "(8) No function or duties of the Drug Abuse Task
24 Force shall be the responsibility or under the purview of the
25 Governor of Alabama.

26 "(9) The task force shall not be obligated to fund
27 the development of programs described in subdivision (1)

1 unless the Legislature appropriates funding to the task force
2 for this purpose.

3 ~~"(10) a. One year from the date of the full~~
4 ~~implementation of this act, the task force shall report to the~~
5 ~~Legislature a full and detailed assessment of all efforts to~~

6 "(10)a. A subcommittee shall be created within the
7 task force to study the availability of ephedrine and
8 ephedrine products. Members of the subcommittee shall include:

9 "1. The Attorney General.

10 "2. A member of the Legislature appointed by the
11 Speaker of the House of Representatives.

12 "3. A member of the Legislature appointed by the
13 President Pro Tempore of the Senate.

14 "4. A District Attorney, or his or her designee,
15 appointed by the Alabama District Attorneys Association, from
16 a jurisdiction with a significant and statistically verifiable
17 number of methamphetamine laboratory seizures.

18 "5. A sheriff appointed by the Alabama Sheriff's
19 Association, from a jurisdiction with a significant and
20 statistically verifiable number of methamphetamine laboratory
21 seizures.

22 "6. A chief of police appointed by the Alabama
23 Chiefs of Police Association, from a jurisdiction with a
24 significant and statistically verifiable number of
25 methamphetamine laboratory seizures.

26 "7. The Director of the Alabama Department of
27 Forensic Sciences, or his or her designee.

1 "8. The Chairman of the Alabama Drug Abuse Task
2 Force.

3 "b. On the tenth day of the next regular session of
4 the Legislature, the subcommittee of the task force shall
5 report to the ADATF and the Legislature a full and detailed
6 assessment of all efforts to limit or ultimately eliminate the
7 availability of ephedrine or ephedrine products to persons
8 with the intent to use them for manufacturing methamphetamine.

9 "b. c. The subcommittee of the task force shall
10 evaluate and report the effectiveness of the electronic drug
11 offender tracking system created in Section 20-2-190.2, as
12 well as statutory provisions to track or block any illegal or
13 inappropriate sales of ephedrine products. This evaluation and
14 report shall include consideration of criminal statutes
15 regarding the trafficking and manufacture of methamphetamine,
16 industry efforts to prevent improper usage of ephedrine
17 products, as well as other pertinent laws. Where possible, the
18 task force shall also endeavor to project future capabilities
19 to sustain or improve efforts to limit illegal access to
20 ephedrine products for purposes of manufacturing
21 methamphetamine.

22 "c. d. The subcommittee of the task force, in its
23 effort to provide a complete and accurate report, may utilize,
24 but is not limited to, the use of the following resources:

25 "1. Reports from any governmental or
26 quasi-governmental entity.

1 "2. Statistical data or reports from Alabama
2 Criminal Justice Information Center, National Precursor Log
3 Exchange, Alabama Fusion Center, Drug Enforcement
4 Administration, or any entity that has membership on the task
5 force.

6 "3. Other appropriate law enforcement, drug
7 treatment, drug prevention, or medical entities that gather
8 verifiable data regarding drug usage, abuse, or any drug crime
9 or drug related crime.

10 "4. Relevant public hearings by the ADATF.

11 "5. Anecdotal information from named and
12 legitimately verifiable sources.

13 "6. All data or information must be sourced and
14 verifiable.

15 "d.1. Any report of the ADATF subcommittee to any
16 governmental entity shall first be submitted to the Alabama
17 Department of Public Health. The department shall evaluate the
18 report. In its review, the department shall evaluate the
19 quality and authenticity of the underlying sourced data. The
20 department shall also determine if the data contained within
21 the report is verifiable and if the ADATF or subcommittee of
22 the task force followed generally accepted scientific or
23 statistical methods in the compilation of the report.

24 "2. In making its determination, the department may
25 consider, but is not limited to, evaluating any method,
26 process, research, calculations, design, control, analysis,
27 hypothesis, or program utilized in the report.

1 "3. In the event that the department determines that
2 the proper methods were not followed, it shall notify the task
3 force or subcommittee of the task force of any deficiencies in
4 the report and allow the task force or subcommittee to revise
5 the report to correct the deficiencies. Otherwise, the report
6 shall contain a notation of the findings of any deficiencies
7 by the department.

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

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

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

3 "b. Pursuant to a subpoena.

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

13 ~~"(j) The primary investigative law enforcement or
14 prosecutorial entity shall be entitled, upon order of the
15 court, to recover restitution from any defendant for any
16 legitimate cost incurred in the course of the investigation or
17 prosecution, upon conviction for any violation of Section
18 13A-12-260 or 20-2-190."~~

19 "(j) (1) Upon conviction for any violation of Section
20 13A-12-260 or 20-2-190, or any violation of a controlled
21 substance or illegal drug crime under Title 13A or Title 20
22 and in addition to restitution and other costs that may be
23 ordered pursuant to Section 15-18-67, the primary
24 investigative law enforcement or prosecutorial entity shall be
25 entitled, upon request of the district attorney and an order
26 of the court, to recover restitution from any defendant for

1 any legitimate cost incurred in the course of the
2 investigation or prosecution.

3 "(2) Restitution may include, but shall not be
4 limited to, any cost incurred by the primary investigative law
5 enforcement entity of any hazardous material or environmental
6 cleanup of substances related to the manufacture of a
7 controlled substance.

8 "(3) Any real property owner that demonstrates to
9 the court that he or she had no knowledge of, or had no reason
10 to have knowledge of, any illegal manufacturing of controlled
11 substances on his or her property by a defendant convicted of
12 a violation of Section 13A-12-260 or 20-2-190, or any
13 violation of a controlled substance or illegal drug crime
14 under Title 13A or Title 20, through the district attorney,
15 may request a court order requiring the defendant to pay to
16 the real property owner all reasonable costs, if any,
17 associated with any legitimate environmental cleanup or
18 remediation or repair of the real property where the defendant
19 had committed a controlled substance crime."

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

22 §20-2-190.2.

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

25 (1) DRUG RELATED CONVICTION. Any conviction or plea
26 of nolo contendere for the offense of possession,
27 distribution, trafficking, or any degree of manufacture of

1 controlled substances, or drug paraphernalia. A drug related
2 conviction shall also include the inchoate crimes of attempt,
3 solicitation, or conspiracy of any of the drug related crimes.

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

6 (b) Effective January 1, 2013, the Alabama Criminal
7 Justice Information Center shall implement a real-time
8 electronic drug offender tracking system to catalogue all
9 criminal convictions in this state of persons convicted of
10 felonies or misdemeanors involving the possession,
11 distribution, manufacture, or trafficking of controlled
12 substances. This catalogue shall include, but not be limited
13 to, paraphernalia convictions, violations of this article, in
14 whole or in part, attempts, conspiracies, or solicitations to
15 commit any crime involving the possession, distribution, or
16 manufacture of controlled substances. A drug offender
17 convicted of violations of this act, possession of a
18 controlled substance, or drug paraphernalia shall remain in
19 the drug offender tracking system for seven years beginning
20 upon each conviction. A drug offender convicted of
21 manufacture, distribution, or trafficking of controlled
22 substances shall remain in the drug offender tracking system
23 for ten years beginning upon each conviction. A person's name
24 shall be removed from the tracking system upon the expiration
25 of the applicable seven or ten years from the adjudication or
26 conviction of the last violation and confirmation that the
27 drug offender has no new convictions.

1 (c) The electronic drug offender tracking system
2 shall have the technological capability to receive ephedrine
3 and pseudoephedrine sales data from pharmacies submitted
4 pursuant to this section. The electronic drug offender
5 tracking system shall be capable of bridging with existing and
6 future operational systems used by pharmacies at no charge to
7 the pharmacies. The Alabama Criminal Justice Information
8 Center may enter into a public-private partnership, through a
9 memorandum of understanding or similar arrangement, to make
10 the system available to pharmacies and law enforcement in the
11 state.

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

24 (2) The Alabama Criminal Justice Information Center
25 shall notify the association when a person is removed from the
26 drug offender tracking system as required under subsection
27 (b).

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

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

5 (2) Pursuant to a subpoena.

6 (f) The drug offender tracking system shall be
7 capable of generating a stop sale alert, which shall be a
8 notification that the purchaser having a previous conviction
9 for a drug related offense and completion of the sale would
10 result in a violation of law under Section 20-2-190. The
11 system shall contain an override function for use by a
12 dispenser of ephedrine or pseudoephedrine who has a reasonable
13 fear of imminent bodily harm. Each instance in which the
14 override function is utilized shall be logged by the system.

15 (g) Effective January 1, 2013, provided a system is
16 available to the state without cost to the state or pharmacies
17 for accessing the system, before completing a sale of a
18 product covered by this section, a pharmacy shall submit the
19 required information to the electronic drug offender tracking
20 system established under subsection (b).

21 (h) If the pharmacy, after checking the electronic
22 drug offender database, the purchaser is a drug offender, the
23 pharmacist shall not complete the sale, except when the seller
24 follows the procedure described under subsection (f) for
25 overriding the stop sale alert when the seller has fear of
26 bodily harm.

1 (i) Any seller who fails to comply with this section
2 shall be guilty of a Class A misdemeanor for a first offense,
3 and a Class C felony for a second or subsequent offense,
4 except that sellers who exercise the override feature
5 described under section (f) when a stop sale alert is
6 generated shall not be subject to misdemeanor or felony
7 charges. Absent negligence, wantonness, recklessness, or
8 deliberate misconduct, any pharmacist maintaining the
9 electronic drug offender tracking system in accordance with
10 this section shall not be civilly liable as a result of any
11 act or omission in carrying out the duties required by this
12 subsection and shall be immune from liability to any third
13 party unless the pharmacy has violated any provision of this
14 subsection in relation to a claim brought for such violation.

15 (j) (1) A drug offender convicted of violations of
16 this act, possession of a controlled substance, or drug
17 paraphernalia shall be prohibited from the retail or
18 prescription purchase of any ephedrine or pseudoephedrine,
19 their salts or optical isomers, or salts of optical isomers or
20 product for the entire seven years the person is required to
21 be included in the drug offender tracking system.

22 (2) A drug offender convicted of manufacture,
23 distribution, or trafficking of controlled substances shall be
24 prohibited from the retail or prescription purchase of any
25 ephedrine or pseudoephedrine, their salts or optical isomers,
26 or salts of optical isomers, or product for the entire ten

1 years the person is required to be included in the drug
2 offender tracking system.

3 (k) A drug offender who knowingly and unlawfully
4 purchases or attempts, solicits another, or conspires to
5 purchase ephedrine or pseudoephedrine, their salts or optical
6 isomers, or salts of optical isomers or product in violation
7 of this section, is guilty of a Class A misdemeanor, except
8 upon a subsequent conviction, is guilty of a Class C felony.

9 Section 4. Although this bill would have as its
10 purpose or effect the requirement of a new or increased
11 expenditure of local funds, the bill is excluded from further
12 requirements and application under Amendment 621, now
13 appearing as Section 111.05 of the Official Recompilation of
14 the Constitution of Alabama of 1901, as amended, because the
15 bill defines a new crime or amends the definition of an
16 existing crime.

17 Section 5. The provisions of this act are severable.
18 If any part of this act is declared invalid or
19 unconstitutional, that declaration shall not affect the part
20 which remains.

21 Section 6. This act shall become effective
22 ~~immediately following its passage and approval by the~~
23 immediately, with the exception of Section 3, which shall
24 become effective on August 1, 2012, following its passage and
25 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Health 21-FEB-12

Read for the second time and placed
on the calendar 6 amendments 08-MAR-12

Read for the third time and passed
as amended..... 15-MAR-12

Yeas 101, Nays 1, Abstains 1

Greg Pappas
Clerk