

1 HB92
2 135706-1
3 By Representatives Greer, Johnson (W), Henry and Rich
4 RFD: Health
5 First Read: 07-FEB-12
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8 SYNOPSIS: Under existing law, controlled substances
9 may only be sold by prescription. Under existing
10 law, the State Board of Health has the authority to
11 add, delete, or reschedule substances as controlled
12 substances, but the board must exclude a
13 nonnarcotic substance from a schedule if the
14 substance may lawfully be sold over the counter
15 without a prescription pursuant to federal law.
16 Controlled substances are subject to certain
17 storage, record keeping, and security control
18 requirements.

19 This bill would allow ephedrine,
20 pseudoephedrine, and phenylpropanolamine to be sold
21 by prescription by requiring the State Board of
22 Health to classify the drugs as Schedule III
23 controlled substances. This bill would give the
24 board the authority to exempt a product containing
25 any of these substances from classification as a
26 controlled substance if the board finds that the
27 product is effectively formulated to prevent

1 conversion of the active ingredient into
2 methamphetamine or its salts or precursors. This
3 bill would also authorize the board to revoke the
4 exemption upon notification from the Department of
5 Public Safety that the product exempted is not
6 effectively formulated to prevent its conversion to
7 methamphetamine.

8 This bill would exempt wholesale drug
9 distributors licensed by the Board of Pharmacy and
10 registered with and regulated by the United States
11 Drug Enforcement Agency from storage, reporting,
12 and record keeping or physical security control
13 requirements related to ephedrine and
14 pseudoephedrine.

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16 A BILL
17 TO BE ENTITLED
18 AN ACT
19

20 To amend Sections 20-2-20 and 20-2-181, Code of
21 Alabama 1975; to require the State Board of Health to classify
22 ephedrine, pseudoephedrine, and phenylpropanolamine as
23 controlled substances; to authorize the board to exempt from
24 classification products that are effectively formulated to
25 prevent their conversion to methamphetamine; to authorize the
26 board to revoke the exemption; and to exempt certain wholesale
27 drug distributors from reporting, storage, and security

1 requirements for controlled substances classified as such
2 because they contain ephedrine, pseudoephedrine, or
3 phenylpropanolamine.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Sections 20-2-20 and 20-2-181, Code of
6 Alabama 1975, are amended to read as follows:

7 "§20-2-20.

8 "(a) The State Board of Health, unless otherwise
9 specified, shall administer this chapter and may add
10 substances to or delete or reschedule all substances
11 enumerated in the schedules in Sections 20-2-23, 20-2-25,
12 20-2-27, 20-2-29, or 20-2-31 pursuant to the procedures of the
13 State Board of Health. In making a determination regarding a
14 substance, the State Board of Health shall consider all of the
15 following:

16 "(1) The actual or relative potential for abuse.

17 "(2) The scientific evidence of its pharmacological
18 effect, if known.

19 "(3) The state of current scientific knowledge
20 regarding the substance.

21 "(4) The history and current pattern of abuse.

22 "(5) The scope, duration, and significance of abuse.

23 "(6) The risk to the public health.

24 "(7) The potential of the substance to produce
25 psychic or physiological dependence liability.

26 "(8) Whether the substance is an immediate precursor
27 of a substance already controlled under this chapter.

1 "(b) After considering the factors enumerated in
2 subsection (a), the State Board of Health shall make findings
3 with respect thereto and issue a rule controlling the
4 substance if it finds the substance has a potential for abuse.

5 "(c) If any substance is designated, rescheduled, or
6 deleted as a controlled substance under federal law and notice
7 thereof is given to the State Board of Health, the State Board
8 of Health shall similarly control the substance under this
9 chapter after the expiration of 30 days from publication in
10 the federal register of a final order designating a substance
11 as a controlled substance or rescheduling or deleting a
12 substance, unless within that 30-day period, the State Board
13 of Health objects to inclusion, rescheduling, or deletion. In
14 that case, the State Board of Health shall publish the reasons
15 for objection and afford all interested parties an opportunity
16 to be heard. At the conclusion of the hearing, the State Board
17 of Health shall publish its decision, which shall be final
18 unless altered by statute. Upon publication of objection to
19 inclusion, rescheduling, or deletion under this chapter by the
20 State Board of Health, control under this chapter is stayed
21 until the State Board of Health publishes its decision.

22 "(d) Authority to control under this section does
23 not extend to distilled spirits, wine, malt, beverages, or
24 tobacco.

25 "(e) The State Board of Health shall exclude any
26 nonnarcotic substance from a schedule if such substance, under
27 the federal Food, Drug and Cosmetic Act, the federal

1 Comprehensive Drug Abuse Prevention and Control Act of 1970,
2 and the law of this state may be lawfully sold over the
3 counter without a prescription.

4 "(f) (1) Notwithstanding subsection (e), the State
5 Board of Health shall classify ephedrine, pseudoephedrine, and
6 phenylpropanolamine as Schedule III controlled substances
7 pursuant to this chapter.

8 "(2) Upon application of a manufacturer, the State
9 Board of Health may exempt from classification as a controlled
10 substance a product containing ephedrine, pseudophedrine, or
11 phenylpropanolamine if the product is effectively formulated
12 to prevent conversion of the active ingredient into
13 methamphetamine or its salts or precursors. Upon notification
14 from the Department of Public Safety that it has probable
15 cause to believe that a product exempted under this
16 subdivision does not effectively prevent conversion of the
17 active ingredient into methamphetamine or its salts or
18 precursors, the State Board of Health may issue an emergency
19 rule revoking the exemption for the product pending a hearing.

20 "(3) A wholesale drug distributor licensed and
21 regulated by the State Board of Pharmacy and registered and
22 regulated by the United States Drug Enforcement Agency is
23 exempt from the storage, reporting, record keeping, and
24 physical security control requirements for controlled
25 substances containing any material, compound, mixture, or
26 preparation which contains any quantity of ephedrine,
27 pseudoephedrine, or phenylpropanolamine and which is

1 classified as a controlled substance pursuant to this
2 subsection.

3 "§20-2-181.

4 "(a) The Board of Pharmacy ~~shall~~, within one year of
5 July 29, 1991, shall designate by rule listed precursor
6 chemicals.

7 "(b) The Board of Pharmacy may subsequently by rule
8 add chemicals as listed precursor chemicals following the
9 criteria set forth in subdivision (2) of Section 20-2-180, and
10 may also by rule delete any substance previously named as a
11 listed precursor chemical. In no event shall a chemical also
12 be designated as a listed precursor chemical if it has been
13 determined to be a controlled substance or an immediate
14 precursor chemical pursuant to the Alabama Uniform Controlled
15 Substances Act, Section 20-2-1 et seq.

16 "(c) If any chemical is designated or deleted as a
17 listed precursor chemical under federal law and notice thereof
18 is given to the Board of Pharmacy, the board shall similarly
19 list or delete the substance under this article after the
20 expiration of 30 days from publication in the federal register
21 of a final rule or order designating or deleting such
22 substance as a listed precursor chemical, unless, within 30
23 days from publication in the federal register of the final
24 rule or order, the board objects to the designation or
25 deletion. In that case, the board shall publish the reasons
26 for objection in the Alabama Administrative Monthly and shall
27 afford all interested parties an opportunity to submit written

1 comments and to be heard. At the conclusion of the hearing and
2 the comment period, the State Board of Pharmacy shall publish
3 its decision, which shall be final unless altered by statute.
4 Upon publication of an objection to the designation or
5 deletion by the board, the designation or deletion is stayed
6 until the board publishes its decision. Notwithstanding the
7 ~~provisions of the~~ Alabama Administrative Procedure Act,
8 Sections 41-22-1 through 41-22-27, no further rulemaking or
9 administrative proceedings shall be required of the board with
10 respect to the designation or deletion of substances similarly
11 designated or deleted under federal law.

12 "(d) Until the Board of Pharmacy adopts a rule
13 designating listed precursor chemicals, as required by
14 subsection (a), all of the following chemicals or substances
15 are hereby deemed listed precursor chemicals:

16 "(1) Acetic anhydride~~;~~.

17 "(2) Anthranilic acid and its salts~~;~~.

18 "(3) Benzyl cyanide~~;~~.

19 "~~(4) Ephedrine, its salts, optical isomers, and~~
20 ~~salts of optical isomers;~~

21 "~~(5)~~ (4) Ergonovine and its salts~~;~~.

22 "~~(6)~~ (5) Ergotamine and its salts~~;~~.

23 "~~(7)~~ (6) Hydriodic acid~~;~~.

24 "~~(8)~~ (7) Isosafrol~~;~~.

25 "~~(9)~~ (8) Methylamine~~;~~.

26 "~~(10)~~ (9) N-Acetylanthranilic acid and its salts~~;~~.

1 "~~(11)~~ (10) Norpseudoephedrine, its salts, optical
2 isomers, and salts of optical isomers~~;~~.

3 "~~(12)~~ (11) Phenylacetic acid and its salts~~;~~.

4 "~~(13)~~ ~~Phenylpropanolamine, its salts, optical~~
5 ~~isomers, and salts of optical isomers;~~

6 "~~(14)~~ (12) Piperidine and its salts~~;~~.

7 "~~(15)~~ ~~Pseudoephedrine, its salts, optical isomers,~~
8 ~~and salts of optical isomers;~~

9 "~~(16)~~ (13) Safrole~~;~~ ~~and.~~

10 "~~(17)~~ (14) 3,4-Methylenedioxyphenyl-2-propanone."

11 Section 2. This act shall become effective on the
12 first day of the third month following its passage and
13 approval by the Governor, or its otherwise becoming law.