

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

ACT NO. 2012-237



1
2 ENROLLED, An Act,

3 To amend Sections 13A-12-212, 13A-12-260, 20-2-72,
4 and 20-2-190, Code of Alabama 1975; to add Section 20-2-190.2
5 to the Code of Alabama 1975; to further regulate the sale of
6 over-the-counter products containing certain quantities of
7 ephedrine or pseudoephedrine within certain periods of time;
8 to enhance existing criminal penalties for violations and to
9 provide additional criminal penalties; to revise the
10 membership of the Alabama Drug Abuse Task Force and to require
11 a report to the Legislature; to require the Alabama Criminal
12 Justice Information Center to implement an electronic drug
13 offender tracking system to catalogue all criminal convictions
14 in this state and other states of persons with certain felony
15 and misdemeanor convictions related to methamphetamine; to
16 provide specific criminal penalties for certain uses of drug
17 paraphernalia in violation of the controlled substances laws
18 of this state; and in connection therewith would have as its
19 purpose or effect the requirement of a new or increased
20 expenditure of local funds within the meaning of Amendment 621
21 of the Constitution of Alabama of 1901, now appearing as
22 Section 111.05 of the Official ReCompilation of the
23 Constitution of Alabama of 1901, as amended.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

1 (1) The danger of methamphetamine manufacture to the
2 public and especially to law enforcement involved in the
3 investigation and clean-up of clandestine methamphetamine
4 laboratories is of paramount concern.

5 (2) Ephedrine or pseudoephedrine, their salts or
6 optical isomers, or salts of optical isomers are the essential
7 ingredient in the manufacture of methamphetamine.

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

17 Section 2. Sections ~~13A-12-260~~ 13A-12-212,
18 13A-12-260, ~~and 20-2-290~~, 20-2-72, and 20-2-190, Code of
19 Alabama 1975, are amended to read as follows:

20 "13A-12-212

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

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

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

8 "(b) Unlawful possession of a controlled substance
9 is a Class C felony.

10 §13A-12-260.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"b. Water pipes;

"c. Carburetion tubes and devices;

"d. Smoking and carburetion masks;

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

"f. Miniature cocaine spoons, and cocaine vials;

"g. Chamber pipes;

"h. Carburetor pipes;

"i. Electric pipes;

"j. Air-driven pipes;

"k. Chillums;

1 "l. Bongs;

2 "m. Ice pipes or chillers;

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

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

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

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

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

20 "(4) The existence of any residue of controlled
21 substances on the object;

22 "(5) Direct or circumstantial evidence of the intent
23 of an owner, or of anyone in control of the object, to deliver
24 it to persons whom he knows intend to use the object to
25 facilitate a violation of the controlled substances laws of

1 this state; the innocence of an owner, or of anyone in control
2 of the object, as to a direct violation of such laws shall not
3 prevent a finding that the object is intended for use, or
4 designed for use as drug paraphernalia;

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

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

9 "(8) National and local advertising concerning its
10 use;

11 "(9) The manner in which the object is displayed for
12 sale;

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

17 "(11) Direct or circumstantial evidence of the ratio
18 of sales of the object or objects to the total sales of the
19 business enterprise;

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

22 "(13) Expert testimony concerning its use.

23 "(c) Use or possession with intent to use. - It
24 shall be unlawful for any person to use, or to possess with
25 intent to use, or to use to inject, ingest, inhale or

1 otherwise introduce into the human body, drug paraphernalia to
2 plant, propagate, cultivate, grow, harvest, ~~manufacture~~,
3 compound, convert, produce, process, prepare, test, analyze,
4 pack, repack, store, contain or conceal a controlled substance
5 in violation of the controlled substances laws of this state.
6 Any person who violates this subsection is guilty of a Class A
7 misdemeanor and upon conviction shall be punished as
8 prescribed by law.

9 "(d)(1) It shall be unlawful for any person to use,
10 deliver, or sell, possess with intent to deliver or sell, or
11 manufacture with intent to deliver or sell, or to possess with
12 intent to use, drug paraphernalia to manufacture a controlled
13 substance in violation of the controlled substances laws of
14 this state.

15 "(2) Any person who violates this subsection is
16 guilty of a Class C felony. If a person is in violation of
17 this subsection and is in possession of a firearm at the time
18 of the offense, the person shall be guilty of a Class B
19 felony.

20 "(d)(e) Delivery or sale.

21 "(1) It shall be unlawful for any person to deliver
22 or sell, possess with intent to deliver or sell, or
23 manufacture with intent to deliver or sell drug paraphernalia,
24 knowing that it will be used to plant, propagate, cultivate,
25 grow, harvest, ~~manufacture~~, compound, convert, produce,

1 process, prepare, test, analyze, pack, repack, store, contain,
2 conceal, inject, ingest, inhale, or otherwise introduce into
3 the human body a controlled substance in violation of the
4 controlled substances laws of this state. Any person who
5 violates this section is guilty of a Class A misdemeanor and
6 upon conviction shall be punished as prescribed by law. A
7 person who is convicted of a subsequent violation of this
8 subsection shall be guilty of a Class C felony and punished as
9 prescribed by law. Any person convicted of violating this
10 subsection who previously has been convicted of violating
11 subdivision (2) of this subsection shall be subject to the
12 same penalties specified for subsequent violations of this
13 subsection.

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

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

24 "§20-2-72.

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

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

4 "(2) To use in the course of the manufacture or
5 distribution of a controlled substance a registration number
6 which is fictitious, revoked, suspended, or issued to another
7 person;

8 "(3) To acquire or obtain possession of a controlled
9 substance or a precursor chemical enumerated in Section
10 20-2-181 by misrepresentation, fraud, forgery, deception, or
11 subterfuge;

12 "(4) To furnish false or fraudulent material
13 information in or omit any material information from any
14 application, report, or other document required to be kept or
15 filed under this chapter or any record required to be kept by
16 this chapter; or

17 "(5) To make, distribute, or possess any punch, die,
18 plate, stone, or other thing designed to print, imprint, or
19 reproduce the trademark, trade name, or other identifying
20 mark, imprint, or device of another or any likeness of any of
21 the foregoing upon any drug or container or labeling thereof
22 so as to render the drug a counterfeit substance.

23 "(b) Any person who violates this section is guilty
24 of a Class B felony, except that any person who violates

1 subdivision (a)(3) of this section is guilty of a Class C
2 felony.

3 §20-2-190.

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

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

9 "(2) Knowingly makes a false statement in a report
10 or record required by this article or the rules adopted
11 thereunder;

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

17 "(b) Notwithstanding the provisions of Section
18 20-2-188, a person who possesses, sells, transfers, or
19 otherwise furnishes or attempts to solicit another or
20 conspires to possess, sell, transfer, or otherwise furnish a
21 listed precursor chemical or a product containing a precursor
22 chemical or ephedrine or pseudoephedrine, their salts or
23 optical isomers, or salts of optical isomers commits an
24 offense if the person possesses, sells, transfers, or
25 furnishes the substance with the knowledge or intent that the

1 substance will be used in the unlawful manufacture of a
2 controlled substance. An offense under this subsection shall
3 constitute a Class B felony.

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

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

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

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

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

1 "~~(2)~~(4) No person shall deliver, sell, or purchase
2 products sold over-the-counter that contain a combined total
3 of more than 3.6 grams per calendar day or more than ~~nine~~ 7.5
4 grams per 30 days, of ephedrine base or pseudoephedrine base.
5 It shall not be a defense under this subdivision if no money
6 was exchanged during a transaction that would otherwise be
7 unlawful under this subdivision.

8 "~~(3)~~(5)a. Each pharmacy ~~or retail establishment~~
9 selling an over-the-counter product in compliance with
10 paragraph b. of this subdivision ~~(3)~~ shall require the
11 purchaser of the product or products to be at least 18 years
12 of age, to provide ~~government-issued photographic~~
13 ~~identification of himself or herself~~ a valid, unsuspended
14 driver's license or nondriver identification card issued by
15 this state, a valid, unsuspended driver's license or nondriver
16 identification card issued by another state, a United States
17 Uniformed Services Privilege and Identification Card, or a
18 United States or foreign passport, and to sign a record of
19 each transaction. A record of each transaction shall include
20 the magnetic transfer or electronic entry of information data
21 from the identification card into the system, as well as the
22 type of identification card used, including the number, name,
23 date of birth, and current, valid address of the purchaser,
24 the date and time of the sale, the name of the product being
25 sold, as well as the total quantity in grams, of ephedrine or

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

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

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

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

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

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

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

19 "~~(6)~~(8) A ~~retailer~~ pharmacist who is the general
20 owner or operator of an establishment where ephedrine or
21 pseudoephedrine products are available for sale shall not be
22 penalized pursuant to this section for conduct of an employee
23 if the retailer documents that an employee training program
24 was conducted by or approved by the Alabama Drug Abuse Task
25 Force (ADATF), pursuant to subsection ~~(g)~~ (h). As provided in

1 subsection (h), the Alabama Board of Pharmacy shall develop or
2 approve all training programs for those pharmacy employees
3 referenced in subdivision (1) and submit such programs to the
4 ADATF for approval. The ADATF must review any training
5 programs submitted by the Alabama Board of Pharmacy at its
6 next subsequent called or scheduled public meeting and within
7 7 days, report its decision in writing to the Alabama Board of
8 Pharmacy.

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

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

1 adding this subsection shall generate a stop sale and block
2 any purchase in violation of this subsection, absent a valid
3 lawful prescription.

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

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

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

1 other governmental or quasi-governmental agency or entity
2 partnering with the ADATF to serve the purposes of this
3 article. The Alabama Department of Public Health, ADATF, and
4 the Alabama State Board of Education, shall enter into a
5 memorandum of understanding to develop and implement the
6 training, education, or prevention programs referenced in this
7 section, and are authorized to expend any funds necessary to
8 further the requirements and objective of the ADATF and
9 subsection (h) or any other legitimate drug abuse prevention
10 or law enforcement purpose for the protection of the citizens
11 of this state.

12 "b. Advise the ABC Board, the Alabama Board of
13 Pharmacy, Alabama law enforcement, prosecutorial entities, or
14 other governmental or quasi-governmental agency or entity
15 partnering with the ADATF regarding its responsibilities
16 prescribed in this article.

17 "c. Report to the Legislature ~~as requested by the~~
18 10th day of each legislative session, on the state of illegal
19 drug abuse, trends in the use, distribution, and manufacture
20 of illegal or synthetic drugs, and the use and misuse of ~~and~~
21 ~~misuse of drugs and~~ related precursors in Alabama ~~and make~~
22 ~~recommendations regarding changes to the law and public policy~~
23 ~~that may aid in curbing such abuse and misuse.~~ The ADATF may
24 only gather such information from legitimately verifiable
25 sources or in a public forum. The report may include

1 recommendations with regard to public policy, potential
2 legislation, allocation of resources, or other recommendations
3 which may aid in the curbing of drug abuse and drug crime or
4 would best serve the safety and well being of the state. The
5 report may include, but is not limited to, all of the
6 following:

7 1. Statistical data involving drug abuse, drug
8 crime, or drug related crime.

9 2. Efforts within the state involving education,
10 prevention, and treatment of drug addiction.

11 3. Critical needs of law enforcement.

12 4. Organized crime efforts in the area of drug
13 distribution, trafficking, manufacturing, or related criminal
14 activity.

15 5. Critical needs for prisons.

16 6. Prosecution entities and the courts.

17 7. Other critical threat assessments involving the
18 safety of the State of Alabama.

19 "(2) The task force shall consist of the following
20 members:

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

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

24 "c. A representative appointed by the District
25 Attorney's Association.

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

3 "e. The Director of the Department of Public Safety,
4 or his or her designee.

5 "f. A representative appointed by the Chiefs of
6 Police Association.

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

9 "h. A representative appointed by the Sheriff's
10 Association.

11 "i. A representative appointed by the Narcotics
12 Officers Association.

13 "j. A representative of the Alabama Association of
14 Pharmacists.

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

17 "l. A member or director of the Alabama Sentencing
18 Commission.

19 "m. The Chair of the Alabama Assistant District
20 Attorneys Association.

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

23 "o. A representative of the Alabama Retail
24 Association.

1 "p. A representative of the Alabama Administrative
2 Office of Courts.

3 "q. The Commissioner of the Alabama Department of
4 Corrections, or his or her designee.

5 "r. The State Superintendent of Education, or his or
6 her designee.

7 "s. A representative of the Commission of
8 Environmental Management.

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

11 "u. The State Health Officer, or his or her
12 designee.

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

15 "w. A representative of the mental illness and
16 substance abuse services of the Alabama Department of Mental
17 Health.

18 "x. The Director of the Office of Prosecution
19 Services, or his or her designee.

20 y. A representative of the Alabama Criminal Justice
21 Information Center.

22 z. A representative of the Board of Dental
23 Examiners.

24 aa. A representative of the Alcoholic Beverage
25 Control Board.

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

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

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

12 "(6) The chair of the task force shall call an
13 organizational meeting of the task force within 60 days of
14 July 1, 2010, and the task force shall report its meeting
15 schedule and procedural rules to the Clerk of the House of
16 Representatives and the Secretary of the Senate within 10 days
17 of the meeting. The task force shall instruct the Alabama
18 Criminal Justice Information Center regarding the creation of
19 a drug abuse information system, as well as a drug offender
20 tracking system pursuant to Section 20-2-190.1 20-2-190.2, to
21 further the mission of the task force and assist law
22 enforcement in the prevention of illegal drug activity. This
23 system shall include, but not be limited to, data regarding
24 illegal drug manufacture, trafficking, distribution, and usage
25 trends across the state. This information shall be made

1 available and be in a form and method which will enable the
2 task force to have an accurate and detailed understanding of
3 the nature of drug abuse and the geographical impact of the
4 various abused drugs in Alabama.

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

9 "(8) No function or duties of the Drug Abuse Task
10 Force shall be the responsibility or under the purview of the
11 Governor of Alabama.

12 "(9) The task force shall not be obligated to fund
13 the development of programs described in subdivision (1)
14 unless the Legislature appropriates funding to the task force
15 for this purpose.

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

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

22 "1. The Attorney General.

23 "2. A member of the Legislature appointed by the
24 Speaker of the House of Representatives.

1 "3. A member of the Legislature appointed by the
2 President Pro Tempore of the Senate.

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

7 "5. A sheriff appointed by the Alabama Sheriff's
8 Association, from a jurisdiction with a significant and
9 statistically verifiable number of methamphetamine laboratory
10 seizures.

11 "6. A chief of police appointed by the Alabama
12 Chiefs of Police Association, from a jurisdiction with a
13 significant and statistically verifiable number of
14 methamphetamine laboratory seizures.

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

17 "8. The Chairman of the Alabama Drug Abuse Task
18 Force.

19 "b. On the tenth day of the next regular session of
20 the Legislature, the subcommittee of the task force shall
21 report to the ADATF and the Legislature a full and detailed
22 assessment of all efforts to limit or ultimately eliminate the
23 availability of ephedrine or ephedrine products to persons
24 with the intent to use them for manufacturing methamphetamine.

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

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

17 "1. Reports from any governmental or
18 quasi-governmental entity.

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

24 "3. Other appropriate law enforcement, drug
25 treatment, drug prevention, or medical entities that gather

1 verifiable data regarding drug usage, abuse, or any drug crime
2 or drug related crime.

3 "4. Relevant public hearings by the ADATF.

4 "5. Anecdotal information from named and
5 legitimately verifiable sources.

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

8 "d.1. Any report of the ADATF subcommittee to any
9 governmental entity shall first be submitted to the Alabama
10 Department of Public Health. The department shall evaluate the
11 report. In its review, the department shall evaluate the
12 quality and authenticity of the underlying sourced data. The
13 department shall also determine if the data contained within
14 the report is verifiable and if the ADATF or subcommittee of
15 the task force followed generally accepted scientific or
16 statistical methods in the compilation of the report.

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

21 "3. In the event that the department determines that
22 the proper methods were not followed, it shall notify the task
23 force or subcommittee of the task force of any deficiencies in
24 the report and allow the task force or subcommittee to revise
25 the report to correct the deficiencies. Otherwise, the report

1 shall contain a notation of the findings of any deficiencies
2 by the department.

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

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

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

25 "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)~~ (4) of subsection (c). The
6 system shall contain an override function for use by a
7 dispenser of ephedrine or pseudoephedrine who has a reasonable
8 fear of imminent bodily harm. Each instance in which the
9 override function is utilized shall be logged by the system.

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

16 "(j) (1) Upon conviction for any violation of Section
17 13A-12-260 or 20-2-190, or any violation of a controlled
18 substance or illegal drug crime under Title 13A or Title 20
19 and in addition to restitution and other costs that may be
20 ordered pursuant to Section 15-18-67, the primary
21 investigative law enforcement or prosecutorial entity shall be
22 entitled, upon request of the district attorney and an order
23 of the court, to recover restitution from any defendant for
24 any legitimate cost incurred in the course of the
25 investigation or prosecution.

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

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

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

20 §20-2-190.2.

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

23 (1) DRUG RELATED CONVICTION. Any conviction or plea
24 of nolo contendere for the offense of possession,
25 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

1 conviction of the last violation and confirmation that the
2 drug offender has no new convictions.

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

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

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

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

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

(2) Pursuant to a subpoena.

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

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

1 (h) If the pharmacy, after checking the electronic
2 drug offender database, the purchaser is a drug offender, the
3 pharmacist shall not complete the sale, except when the seller
4 follows the procedure described under subsection (f) for
5 overriding the stop sale alert when the seller has fear of
6 bodily harm.

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

21 (j)(1) A drug offender convicted of violations of
22 this act, possession of a controlled substance, or drug
23 paraphernalia shall be prohibited from the retail or
24 prescription purchase of any ephedrine or pseudoephedrine,
25 their salts or optical isomers, or salts of optical isomers or

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

3 (2) A drug offender convicted of manufacture,
4 distribution, or trafficking of controlled substances shall be
5 prohibited from the retail or prescription purchase of any
6 ephedrine or pseudoephedrine, their salts or optical isomers,
7 or salts of optical isomers, or product for the entire ten
8 years the person is required to be included in the drug
9 offender tracking system.

10 (k) A drug offender who knowingly and unlawfully
11 purchases or attempts, solicits another, or conspires to
12 purchase ephedrine or pseudoephedrine, their salts or optical
13 isomers, or salts of optical isomers or product in violation
14 of this section, is guilty of a Class A misdemeanor, except
15 upon a subsequent conviction, is guilty of a Class C felony.

16 Section 4. Although this bill would have as its
17 purpose or effect the requirement of a new or increased
18 expenditure of local funds, the bill is excluded from further
19 requirements and application under Amendment 621, now
20 appearing as Section 111.05 of the Official ReCompilation of
21 the Constitution of Alabama of 1901, as amended, because the
22 bill defines a new crime or amends the definition of an
23 existing crime.

24 Section 5. The provisions of this act are severable.
25 If any part of this act is declared invalid or


1 unconstitutional, that declaration shall not affect the part
2 which remains.

3 Section 6. This act shall become effective
4 ~~immediately following its passage and approval by the~~
5 immediately, with the exception of Section 3, which shall
6 become effective on August 1, 2012, following its passage and
7 approval by the 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 15-MAR-12, as amended.

Greg Pappas
Clerk

Senate

19-APR-12

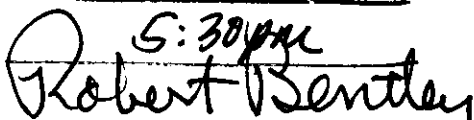
Passed

APPROVED

04/24/12

TIME

5:30 PM



GOVERNOR

Alabama Secretary Of State

Act Num....: 2012-237
Bill Num....: H-363

Recv'd 04/25/12 02:54pmSLF

SPONSOR

Miller

SPONSORS

HOUSE ACTION

I HEREBY CERTIFY THAT THE
RESOLUTION AS REQUIRED IN
SECTION C OF ACT NO. 81-889
WAS ADOPTED AND IS ATTACHED
TO THE BILL, H.B. 363

YEAS 96 NAYS 1

GREG PAPPAS, Clerk

I HEREBY CERTIFY THAT THE
NOTICE & PROOF IS ATTACHED
TO THE BILL, H.B. _____
AS REQUIRED IN THE GENERAL
ACTS OF ALABAMA, 1975 ACT NO.
919.

GREG PAPPAS, Clerk

CONFERENCE COMMITTEE

House Conferees _____

SENATE ACTION

DATE:

3-20-

2011

RD 1 RFD

Judy

This Bill was referred to the Standing
Committee of the Senate on _____

and was acted upon by such Committee in
session and is by order of the Committee
returned therefrom with a favorable report
w/amend(s) _____ w/sub _____ by a vote of

yeas 11 nays 0 abstain _____

this 4th day of April 2012

Chairperson

DATE:

4-05-

2011

RF

FAV

RD 2 CAL

DATE:

3-22-

2011

RE-REFERRED

✓ RE-COMMITTED ☐

Committee _____

I hereby certify that the Resolution as
required in Section C of Act No. 81-889
was adopted and is attached to the Bill,
HB 363

YEAS _____ NAYS _____

PATRICK HARRIS,
Secretary

SENATE ACTION
(continued)

DATE: 11-9-12 RD 3 at 11
PASSED 47 PASSED AS AMENDED

YEAS 27 NAYS 4

And was ordered returned forthwith to the H
PATRICK HA
Sec

DATE:

INDEFINITELY POSTPONED YEAS NAYS

DATE:

RECONSIDERED YEAS NAYS

CONFERENCE COMMITTEE

Senate Conferees

This bill having been referred to the Commi
Rules pursuant to Senate Rule 23 is reported
Senate for assignment to the Committee on:

This _____ day of _____, 20

_____, Chair

Date:

Rereferred

Committee: