

§20-2-190. Penalties; sale of ephedrine, etc.; Alabama Drug Abuse Task Force.

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

- (1) Knowingly fails to comply with the reporting requirements of this article;
- (2) Knowingly makes a false statement in a report or record required by this article or the rules adopted thereunder;
- (3) Is required by this article to have a listed precursor chemical license or permit, and is a person as defined by this article, and knowingly or deliberately fails to obtain such a license or permit. An offense under this subsection shall constitute a Class C felony.

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

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

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

(3) All packages of tablets containing ephedrine or pseudoephedrine shall be stored by a pharmacy by placing the products behind a counter, within the pharmacy where the public is not permitted.

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

(5) a. Each pharmacy selling an over-the-counter product in compliance with paragraph b. of this subdivision shall require the purchaser of the product or products to be at least 18 years of age, to provide a valid, unsuspended driver's license or nondriver identification card issued by this state, a valid, unsuspended driver's license or nondriver identification card issued by another state, a United States Uniformed Services Privilege and Identification Card, or a United States or foreign passport, and to sign a record of each transaction. A record of each transaction shall include the magnetic transfer or electronic entry of information data from the identification card into the system, as well as the type of identification card used, including the number, name, date of birth and current, valid address of the purchaser, the date and time of the sale, the name of the product being sold, as well as the total quantity in grams, of ephedrine or pseudoephedrine being sold. The system required pursuant to this section shall be available to the state and to pharmacies accessing the system without cost. Effective January 1, 2011, 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 sales tracking system established under subdivision (1) of subsection (i). The seller shall not complete the sale if the system generates a stop sale alert except when the seller follows the procedure described under subsection (i) for overriding the stop sale alert when the seller has fear of bodily harm. Any seller who fails to comply with this subdivision shall be guilty

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

b. If a pharmacy selling an over-the-counter product in compliance with subdivision (3) experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with paragraph a. of this subsection, the pharmacy shall maintain a written log or an alternative electronic recordkeeping mechanism that complies with all identification and documentation requirements of the act adding the amendatory language, until the pharmacy is able to comply with paragraph a. of this subdivision.

(6) This subsection does not apply to products dispensed pursuant to a legitimate prescription.

(7) This subsection shall preempt all local ordinances or regulations governing the sale or purchase of products containing ephedrine or pseudoephedrine.

(8) A pharmacist who is the general owner or operator of an establishment where ephedrine or pseudoephedrine products are available for sale shall not be penalized pursuant to this section for conduct of an employee if the retailer documents that an employee training program was conducted by or approved by the Alabama Drug Abuse Task Force (ADATF), pursuant to subsection (h). As provided in subsection (h), the Alabama Board of Pharmacy shall develop or approve all training programs for those pharmacy employees referenced in subdivision (1) and submit such programs to the ADATF for approval. The ADATF must review any training programs submitted by the Alabama Board of Pharmacy at its next subsequent called or scheduled public meeting and within 7 days, report its decision in writing to the Alabama Board of Pharmacy.

(9) A violation of subdivision (1), (2), (3), or (4) shall constitute a Class A misdemeanor on a first offense and a Class C felony on subsequent offenses. The violations shall be punishable as provided by law.

(d) Any person who resides within any state that requires a prescription for any purchase of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of optical isomers, or who presents a valid identification as provided in subdivision (5) of subsection (c) from any state that requires a prescription for any purchase of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of optical isomers, may purchase those products only upon presentation of a valid prescription for the ephedrine or pseudoephedrine, their salts or optical isomers, or salts of optical isomers. The electronic system established in the act adding this subsection shall generate a stop sale and block any purchase in violation of this subsection, absent a valid lawful prescription.

(e) Beginning October 1, 2005, any wholesaler, manufacturer, or repackager of drug products as defined in Section 34-23-1, other than a wholesaler, manufacturer, or repackager licensed by the Board of Pharmacy, shall obtain a registration annually from the Alcoholic Beverage Control Board which may promulgate and implement administrative rules for the registrations. Beginning October 1, 2010, any wholesaler, manufacturer, or repackager shall keep complete records of all sales and transactions involving a listed precursor chemical or a product containing a precursor chemical including the names of all parties involved in the transaction, the name of the products being sold, as well as the total quantity in grams, of the precursor chemical or product involved. Any wholesaler, manufacturer, or repackager selling a listed precursor chemical or product to an individual shall require the purchaser of the product or products to be at least 18 years of age and to provide government-issued photographic identification of

himself or herself. The records shall be maintained for at least 36 months and the records shall be available for inspection by any law enforcement officer or inspector of the Board of Pharmacy during normal business hours. Failure to comply with subsections (d) and (e) shall be a Class A misdemeanor for a first offense and a Class C felony for a second or subsequent offense.

(f) Beginning October 1, 2005, every retailer of ephedrine or pseudoephedrine, or a product containing ephedrine or pseudoephedrine, is required to be registered with the Alcoholic Beverage Control Board to lawfully sell ephedrine or pseudoephedrine products to consumers.

(g) In addition to any other penalty that may be provided, a sale of ephedrine or pseudoephedrine by a wholesaler, manufacturer, repackager, or retailer without a license as required by subsection (e) and (f) is a Class A misdemeanor for a first offense and a Class C felony for a second or subsequent offense. In addition to any other penalty that may be provided, a sale of ephedrine or pseudoephedrine in violation of this section by a wholesaler, manufacturer, repackager, or retailer who is licensed as required by subsection (e) of (f) shall result in cancellation of the required registration and forfeiture of the right to sell the products for at least two years or longer as determined by the Alcoholic Beverage Control Board.

(h) (1) The Alabama Drug Abuse Task Force (ADATF) is established and given the following authority:

a. Approve or develop drug awareness, enforcement, education, prevention, and training programs. The programs shall be designed to curb the abuse of all dangerous, illegal, or abused drugs, including but not limited to, methamphetamine precursors, other key, critical, common ingredients used to make methamphetamine, or other illegal or abused drugs in the State of Alabama. These programs may be targeted for, but not limited to, employees of establishments where ephedrine or pseudoephedrine products or other key or critical or common ingredients in the illegal manufacturer of methamphetamine or other illegal or dangerous drugs are available for sale. Education, prevention, and training programs also may be targeted to law enforcement, prosecutors, the judiciary, students or that may further serve to protect, educate, and inform the public. The programs may be administered by the Alcoholic Beverage Control Board in conjunction with its program to restrict access to tobacco products by minors pursuant to Chapter 11, Title 28. The programs may be further administered by any law enforcement drug abuse and violent crime task force, the Alabama Department of Education, a licensed private drug education or prevention entity approved by the ADATF, or any other governmental or quasi-governmental agency or entity partnering with the ADATF to serve the purposes of this article. The Alabama Department of Public Health, ADATF, and the Alabama State Board of Education, shall enter into a memorandum of understanding to develop and implement the training, education, or prevention programs referenced in this section, and are authorized to expend any funds necessary to further the requirements and objective of the ADATF and subsection (h) or any other legitimate drug abuse prevention or law enforcement purpose for the protection of the citizens of this state.

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

c. Report to the Legislature by the 10th day of each legislative session, on the state of illegal drug abuse, trends in the use, distribution, and manufacture of illegal or synthetic drugs and the use and misuse of related precursors in Alabama. The ADATF may only gather such information from legitimately verifiable sources or in a public forum. The report may include recommendations with regard to public policy, potential legislation, allocation of resources, or other recommendations which may aid in the curbing of drug abuse and drug crime or would best serve the safety and well being of the state. The report may include, but is not limited to, all of the following.

1. Statistical data involving drug abuse, drug crime, or drug related crime.
2. Efforts within the state involving education, prevention, and treatment of drug addiction.
3. Critical needs of law enforcement.
4. Organized crime efforts in the area of drug distribution, trafficking, manufacturing, or related criminal activity.
5. Critical needs for prisons.
6. Prosecution entities and the courts.

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

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

- a. The Attorney General, or his or her designee.
- b. The President of the Alabama State Board of Pharmacy, or his or her designee.
- c. A representative appointed by the District Attorney's Association.
- d. A member of a regional county drug task force as appointed by the District Attorney's Association.
- e. The Director of the Department of Public Safety, or his or her designee.
- f. A representative appointed by the Chiefs of Police Association.
- g. A member of a regional county drug task force as appointed by the Chiefs of Police Association.
- h. A representative appointed by the Sheriff's Association.
- i. A representative appointed by the Narcotics Officers Association.
- j. A representative of the Alabama Association of Pharmacists.
- k. The Director of the Alabama Department of Revenue, or his or her designee.
- l. A member or director of the Alabama Sentencing Commission.
- m. The Chair of the Alabama Assistant District Attorneys Association.
- n. The Director of the Alabama Department of Human Resources, or his or her designee.
- o. A representative of the Alabama Retail Association.
- p. A representative of the Alabama Administrative Office of Courts.
- q. The Commissioner of the Alabama Department of Corrections, or his or her designee.
- r. The State Superintendent of Education, or his or her designee.
- s. A representative of the Commission of Environmental Management.
- t. The Director of the Alabama Department of Forensic Sciences, or his or her designee.
- u. The State Health Officer, or his or her designee.
- v. The Director of the Alabama Department of Homeland Security, or his or her designee.
- w. A representative of the mental illness and substance abuse services of the Alabama Department of Mental Health.
- x. The Director of the Office of Prosecution Services, or his or her designee.
- y. A representative of the Alabama Criminal Justice Information Center.
- z. A representative of the Board of Dental Examiners.
- aa. A representative of the Alcoholic Beverage Control Board.

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

(4) The membership of the task force shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.

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

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

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

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

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

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

1. The Attorney General.
2. A member of the Legislature appointed by the Speaker of the House of Representatives.
3. A member of the Legislature appointed by the President Pro Tempore of the Senate.
4. A District Attorney, or his or her designee, appointed by the Alabama District Attorneys Association, from a jurisdiction with a significant and statistically verifiable number of methamphetamine laboratory seizures.
5. A sheriff appointed by the Alabama Sheriff's Association, from a jurisdiction with a significant and statistically verifiable number of methamphetamine laboratory seizures.
6. A chief of police appointed by the Alabama Chiefs of Police Association, from a jurisdiction with a significant and statistically verifiable number of methamphetamine laboratory seizures.
7. The Director of the Alabama Department of Forensic Sciences, or his or her designee.
8. The Chairman of the Alabama Drug Abuse Task Force.

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

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

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

1. Reports from (sic) any governmental or quasi-governmental entity.
2. Statistical data or reports from Alabama Criminal Justice Information Center, National Precursor Log Exchange, Alabama Fusion Center, Drug Enforcement Administration, or any entity that has membership on the task force.
3. Other appropriate law enforcement, drug treatment, drug prevention, or medical entities that gather verifiable data regarding drug usage, abuse, or any drug crime or drug related crime.
4. Relevant public hearings by the ADATF.
5. Anecdotal information from named and legitimately verifiable sources.
6. All data or information must be sourced and verifiable.

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

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

the report.

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

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

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

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

b. Pursuant to a subpoena.

(3) This database established pursuant to this subsection shall be capable of generating a stop sale alert, which shall be a notification that completion of the sale would result in the seller or purchaser violating the quantity limits set forth in subdivision (4) of subsection (c). 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.

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

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

3. Any real property owner that demonstrates to the court that he or she had no knowledge of, or had no reason to have knowledge of, any illegal manufacturing of controlled substances on his or her property by a defendant convicted of a violation of Section 13A-12-260 or 20-2-190, or any violation of a controlled substance or illegal drug crime under Title 13A of Title 20, through the district attorney, may request a court order requiring the defendant to pay to the real property owner all reasonable costs, if any, associated with any legitimate environmental cleanup or remediation or repair of the real property where the defendant had committed a controlled substance crime. (Acts 1991, No. 91-589, p. 1085, § 11; Acts 2004-564, p. 1323, §1; Acts 2005-181, p. 365, §1; Act 2009-283, p. 483, §1; Act 2010-215, p. 352, §§1, 2; Acts 2012, effective August 1, 2012.)

§20-2-190.2.

(a) For the purpose of this section, the following words shall have the following meanings:

(1) **DRUG RELATED CONVICTION.** Any conviction or plea of nolo contendere for the offense of possession, distribution, trafficking, or any degree of manufacture of controlled substances, or drug paraphernalia. A drug related conviction shall also include the inchoate crimes of attempt, solicitation, or conspiracy of any of the drug related crimes.

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

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

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

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

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

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

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

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

(k) A drug offender who knowingly and unlawfully purchases or attempts, solicits another, or conspires to purchase ephedrine or pseudoephedrine, their salts or optical isomers, or salts of optical isomers or product in violation of this section, is guilty of a Class A misdemeanor, except upon a subsequent conviction, is guilty of a Class C felony. (Acts 2012, effective August 1, 2012.)