

Section 20-2-190

Penalties; sale of ephedrine, etc.; Alabama Methamphetamine 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 a listed precursor chemical or a product containing a precursor chemical 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) a. 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.

On or after October 1, 2009, no product containing ephedrine or pseudoephedrine shall be sold in this state unless the product is manufactured in such a manner that the ephedrine or pseudoephedrine cannot be extracted so as to be used as an ingredient in the production of methamphetamine.

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

1. Placing the products behind a counter where the public is not permitted; or
2. Placing the products in a locked display case so that a customer wanting access to the packages must ask a store employee for assistance.

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

1. Placing the products behind a counter;
2. Placing the products under video surveillance and retaining the data for 30 days; or
3. Placing the products in a locked display case so that a customer wanting access to the package must ask a store employee for assistance.

(2) No person shall deliver in any single over-the-counter sale more than two packages, or any number of packages that contain a combined total of more than six grams of any product containing ephedrine or pseudoephedrine as the sole active ingredient, or in combination with other active ingredients. A purchase of more than six grams of such a product by an individual within a 30-day period with intent to manufacture shall be unlawful.

(3) Each pharmacy or retail establishment selling an over-the-counter product in compliance with paragraph b. of subdivision (1) shall require the purchaser of the product or products to be at least 18 years of age, to provide photographic identification of himself or herself, and to sign a special electronic or paper register which shall be

maintained as a record of such a sale for inspection by any law enforcement officer or inspector of the Board of Pharmacy during normal business hours. In lieu of providing a photo identification, the purchaser may provide any two of the following forms of identification of himself or herself: A credit card, insurance card, Medicaid or Medicare card, or other government-issued identification card. A copy of the special register shall be maintained by the retail establishment for a minimum of 180 days. Any retailer maintaining the special register 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 Board of Pharmacy.

(4) This subsection does not apply to the following:

- a. Pediatric products labeled pursuant to federal regulation primarily intended for administration to children under 12 years of age according to label instructions.
- b. Products that the Alabama State Board of Pharmacy, upon application of a manufacturer, exempts because the product is formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors.
- c. Products dispensed pursuant to a legitimate prescription.
- d. Any compound, mixture, or preparation which is in liquid, liquid capsule, or gel capsule form if ephedrine or pseudoephedrine is not the only active ingredient.

(5) This subsection shall preempt all local ordinances or regulations governing the possession by individuals or sale by a retail distributor of over-the-counter products containing ephedrine or pseudoephedrine.

(6) A retailer 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 Methamphetamine Abuse Task Force pursuant to subsection (g).

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

(d) 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. 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 and amount of the precursor chemical or product involved. The records shall be maintained for at least 12 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.

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

(f) 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 (d) or (e) is a Class A misdemeanor. 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 (d) or (e) shall result in cancellation of the required registration and forfeiture of the right to sell the products for at least one year or longer as determined by the Alcoholic Beverage Control Board.

(g)(1) The Alabama Methamphetamine Abuse Task Force is created to develop education and training programs that will curb the abuse of methamphetamine precursors used to make methamphetamine, and curb the use of methamphetamine in the State of Alabama. The task force shall consist of the following:

- 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 of the Senate as appointed by the President Pro Tempore of the Senate.
- d. A representative of the House of Representatives as appointed by the Speaker of the House of Representatives.
- e. The Director of the Alcoholic Beverage Control Board, or his or her designee.

(2) The representative of the Alcoholic Beverage Control Board shall serve as chair.

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

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

(5) The task force shall develop training and education programs targeted for employees of establishments where ephedrine or pseudoephedrine products are available for sale and the programs shall 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 task force may avail itself of any advisory information as needed to develop the training and information programs. The chair of the task force shall call an organizational meeting of the task force within 30 days of July 1, 2005, 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 collect data related to the effectiveness of its training and education programs and shall submit a report to the Secretary of the Senate and Clerk of the House no later than December 31 of each year.

(6) 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.

(Acts 1991, No. 91-589, p. 1085, §11; Act 2004-564, p. 1323, §1; Act 2005-181, p. 365, §1.)