

1 HB89
2 126078-1
3 By Representative Millican
4 RFD: Health
5 First Read: 01-MAR-11

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8 SYNOPSIS: Under existing law, controlled substances
9 may only be sold by prescription. Under existing
10 law, the State Board of Health has the authority to
11 add, delete, or reschedule substances as controlled
12 substances, but the board must exclude a
13 nonnarcotic substance from a schedule if the
14 substance may lawfully be sold over the counter
15 without a prescription pursuant to federal law.

16 This bill would allow ephedrine,
17 pseudoephedrine, and phenylpropanolamine to be sold
18 by prescription by requiring the State Board of
19 Health to classify the drugs as Schedule III
20 controlled substances. This bill would give the
21 board the authority to exempt a product containing
22 any of these substances from classification as a
23 controlled substance if the board finds that the
24 product is effectively formulated to prevent
25 conversion of the active ingredient into
26 methamphetamine or its salts or precursors. This
27 bill would also authorize the board to revoke the

1 exemption upon notification from the Department of
2 Public Safety that the product exempted is not
3 effectively formulated to prevent its conversion to
4 methamphetamine.

5
6 A BILL
7 TO BE ENTITLED
8 AN ACT

9
10 To amend Sections 20-2-20 and 20-2-181, Code of
11 Alabama 1975; to require the State Board of Health to classify
12 ephedrine, pseudoephedrine, and phenylpropanolamine as
13 controlled substances; to authorize the board to exempt from
14 classification products that are effectively formulated to
15 prevent their conversion to methamphetamine; and to authorize
16 the board to revoke the exemption.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

20 "§20-2-20.

21 "(a) The State Board of Health, unless otherwise
22 specified, shall administer this chapter and may add
23 substances to or delete or reschedule all substances
24 enumerated in the schedules in Sections 20-2-23, 20-2-25,
25 20-2-27, 20-2-29, or 20-2-31 pursuant to the procedures of the
26 State Board of Health. In making a determination regarding a

1 substance, the State Board of Health shall consider all of the
2 following:

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

4 "(2) The scientific evidence of its pharmacological
5 effect, if known.

6 "(3) The state of current scientific knowledge
7 regarding the substance.

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

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

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

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

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

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

19 "(c) If any substance is designated, rescheduled, or
20 deleted as a controlled substance under federal law and notice
21 thereof is given to the State Board of Health, the State Board
22 of Health shall similarly control the substance under this
23 chapter after the expiration of 30 days from publication in
24 the federal register of a final order designating a substance
25 as a controlled substance or rescheduling or deleting a
26 substance, unless within that 30-day period, the State Board
27 of Health objects to inclusion, rescheduling, or deletion. In

1 that case, the State Board of Health shall publish the reasons
2 for objection and afford all interested parties an opportunity
3 to be heard. At the conclusion of the hearing, the State Board
4 of Health shall publish its decision, which shall be final
5 unless altered by statute. Upon publication of objection to
6 inclusion, rescheduling, or deletion under this chapter by the
7 State Board of Health, control under this chapter is stayed
8 until the State Board of Health publishes its decision.

9 "(d) Authority to control under this section does
10 not extend to distilled spirits, wine, malt, beverages, or
11 tobacco.

12 "(e) The State Board of Health shall exclude any
13 nonnarcotic substance from a schedule if such substance, under
14 the federal Food, Drug and Cosmetic Act, the federal
15 Comprehensive Drug Abuse Prevention and Control Act of 1970,
16 and the law of this state may be lawfully sold over the
17 counter without a prescription.

18 "(f) (1) Notwithstanding subsection (e), the State
19 Board of Health shall classify ephedrine, pseudophedrine, and
20 phenylpropanolamine as Schedule III controlled substances
21 pursuant to this chapter.

22 "(2) Upon application of a manufacturer, the State
23 Board of Health may exempt from classification as a controlled
24 substance a product containing ephedrine, pseudophedrine, or
25 phenylpropanolamine if the product is effectively formulated
26 to prevent conversion of the active ingredient into
27 methamphetamine or its salts or precursors. Upon notification

1 from the Department of Public Safety that it has probable
2 cause to believe that a product exempted under this
3 subdivision does not effectively prevent conversion of the
4 active ingredient into methamphetamine or its salts or
5 precursors, the State Board of Health may issue an emergency
6 rule revoking the exemption for the product pending a hearing.

7 "§20-2-181.

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

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

20 "(c) If any chemical is designated or deleted as a
21 listed precursor chemical under federal law and notice thereof
22 is given to the Board of Pharmacy, the board shall similarly
23 list or delete the substance under this article after the
24 expiration of 30 days from publication in the federal register
25 of a final rule or order designating or deleting such
26 substance as a listed precursor chemical, unless, within 30
27 days from publication in the federal register of the final

1 rule or order, the board objects to the designation or
2 deletion. In that case, the board shall publish the reasons
3 for objection in the Alabama Administrative Monthly and shall
4 afford all interested parties an opportunity to submit written
5 comments and to be heard. At the conclusion of the hearing and
6 the comment period, the State Board of Pharmacy shall publish
7 its decision, which shall be final unless altered by statute.
8 Upon publication of an objection to the designation or
9 deletion by the board, the designation or deletion is stayed
10 until the board publishes its decision. Notwithstanding the
11 ~~provisions of the~~ Alabama Administrative Procedure Act,
12 Sections 41-22-1 through 41-22-27, no further rulemaking or
13 administrative proceedings shall be required of the board with
14 respect to the designation or deletion of substances similarly
15 designated or deleted under federal law.

16 "(d) Until the Board of Pharmacy adopts a rule
17 designating listed precursor chemicals, as required by
18 subsection (a), all of the following chemicals or substances
19 are hereby deemed listed precursor chemicals:

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

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

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

23 "~~(4) Ephedrine, its salts, optical isomers, and~~
24 ~~salts of optical isomers;~~

25 "~~(5)~~ (4) Ergonovine and its salts~~;~~.

26 "~~(6)~~ (5) Ergotamine and its salts~~;~~.

27 "~~(7)~~ (6) Hydriodic acid~~;~~.

- 1 "~~(8)~~ (7) Isosafrol~~;~~.
- 2 "~~(9)~~ (8) Methylamine~~;~~.
- 3 "~~(10)~~ (9) N-Acetylanthranilic acid and its salts~~;~~.
- 4 "~~(11)~~ (10) Norpseudoephedrine, its salts, optical
- 5 isomers, and salts of optical isomers~~;~~.
- 6 "~~(12)~~ (11) Phenylacetic acid and its salts~~;~~.
- 7 "~~(13)~~ Phenylpropanolamine, its salts, optical
- 8 ~~isomers, and salts of optical isomers;~~
- 9 "~~(14)~~ (12) Piperidine and its salts~~;~~.
- 10 "~~(15)~~ Pseudoephedrine, its salts, optical isomers,
- 11 ~~and salts of optical isomers;~~
- 12 "~~(16)~~ (13) Safrole~~;~~ and.
- 13 "~~(17)~~ (14) 3,4-Methylenedioxyphenyl-2-propanone."

14 Section 2. This act shall become effective on the

15 first day of the third month following its passage and

16 approval by the Governor, or its otherwise becoming law.