

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 53rd Legislature (2012)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 1634

By: Brinkley of the Senate

and

Derby of the House

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9 COMMITTEE SUBSTITUTE

10 [pseudoephedrine - electronic methamphetamine

11 precursor tracking service - codification -

12 effective date]

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16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

17 SECTION 1. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 2-341 of Title 63, unless there
19 is created a duplication in numbering, reads as follows:

20 A. Beginning January 1, 2013, any pharmacy that dispenses,
21 sells or distributes any compound mixture or preparation containing
22 any detectable quantity of base pseudoephedrine or ephedrine, its
23 salts or optical isomers, or salts of optical isomers shall maintain

1 an electronic record of the sale. The electronic record of the sale
2 shall include the following information:

- 3 1. Name and address of the purchaser;
- 4 2. Date of birth of the purchaser;
- 5 3. Type of identification and number;
- 6 4. Date and time of the purchase;
- 7 5. Name and quantity of the base pseudoephedrine or ephedrine
8 purchased in grams, but not the overall weight of the products; and
- 9 6. Name, initials and registration number of the licensed
10 pharmacist or registered pharmacy technician.

11 If the electronic tracking service is not able to record the
12 identification type and identification number of the purchaser, the
13 licensed pharmacist or a registered pharmacy technician shall write
14 the identification type and number on the order. The electronic
15 record shall also be maintained in a manner that allows for the
16 determination of the equivalent number of packages purchased and
17 total quantity of base ephedrine or pseudoephedrine purchased.

18 B. By January 1, 2013, each pharmacy in this state shall have
19 in place and operational all equipment necessary to access and use a
20 real-time electronic methamphetamine precursor tracking service
21 which is approved by the Oklahoma State Bureau of Narcotics and
22 Dangerous Drugs Control. The electronic methamphetamine precursor
23 tracking service shall be available free of charge to all law
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1 enforcement agencies within the state for purposes of viewing and
2 searching the database. Pharmacies shall be permitted to access
3 only the information that is submitted by the pharmacy and such
4 access shall be available free of charge. The electronic
5 methamphetamine precursor tracking service shall be self-sustaining
6 and shall not require the use of state or federal taxpayer dollars
7 to operate. The tracking service shall operate and communicate in
8 real-time throughout the state and across state lines with similar
9 multistate systems. The tracking service shall be capable of
10 tracking all required information and generating a stop-sale alert
11 to notify a pharmacy that an attempted purchase by a person of
12 pseudoephedrine or ephedrine exceeds the quantity limits set forth
13 in Section 2-212 of Title 63 of the Oklahoma Statutes. The tracking
14 service shall have the capability of stopping an illegal purchase in
15 real-time and shall contain an override function that allows a
16 pharmacy to complete a sale in violation of this section if the
17 circumstances require that such sale be completed. The tracking
18 service shall track all override sales made by the pharmacy. The
19 Bureau shall select a vendor that meets the requirements specified
20 in this section by no later than October 1, 2012.

21 C. Beginning January 1, 2013, before completing the sale of an
22 over-the-counter product containing pseudoephedrine or ephedrine, a
23 pharmacy shall electronically submit the required information to the
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1 electronic methamphetamine precursor tracking service. The pharmacy
2 shall not complete the sale of the product if the electronic
3 methamphetamine precursor tracking service generates a stop-sale
4 alert.

5 D. Absent negligence, wantonness, recklessness, or deliberate
6 misconduct, any pharmacy utilizing the electronic methamphetamine
7 precursor tracking service in accordance with this section shall not
8 be civilly liable as a result of any act or omission in carrying out
9 the duties required by this section. Such pharmacies shall also be
10 immune from liability to any third party unless the pharmacy has
11 violated a provision of this section in relation to a claim brought
12 for such violation. The provisions of this section shall not apply
13 to a person who obtains the product or products pursuant to a valid
14 prescription.

15 E. The information entered, stored and maintained by the
16 electronic methamphetamine precursor tracking service shall be
17 confidential and shall only be accessed by law enforcement
18 officials, health care professionals and licensed pharmacists for
19 the purpose of controlling the sale of methamphetamine precursors.

20 F. If a pharmacy selling an over-the-counter product containing
21 pseudoephedrine or ephedrine experiences mechanical or electronic
22 failure of the electronic tracking service and is unable to comply
23 with the provisions of this section, the pharmacy shall maintain a
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1 written log until such time as the pharmacy is able to comply with
2 the electronic tracking service requirements.

3 G. A pharmacy selling an over-the-counter product containing
4 pseudoephedrine or ephedrine may seek an exemption from submitting
5 transactions to the electronic tracking service in writing to the
6 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control
7 stating the reasons for such exemption. The Bureau may grant an
8 exemption for good cause, but in no event shall such exemption
9 exceed one hundred eighty (180) days. Any pharmacy that receives an
10 exemption shall maintain a hard-copy logbook and shall require the
11 purchaser to provide the information required pursuant to subsection
12 A of this section before completion of any sale. The logbook shall
13 be maintained as a record of each sale for inspection by any law
14 enforcement official during normal business hours.

15 H. All data that is collected from the pharmacies of this state
16 and stored in the electronic methamphetamine precursor tracking
17 service shall be downloaded and exported by electronic means to the
18 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control at
19 least every twenty-four (24) hours. The export of data shall be in
20 a version that is in compliance with the standards agreed to by both
21 the Bureau and the provider of the electronic methamphetamine
22 precursor tracking service. The export of data shall be executed by
23 way of a memorandum of understanding and without charge to the

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1 Bureau. Any and all data exported to, obtained by, gathered by,
2 transmitted to or stored by the Bureau or its designee shall be the
3 property of the state. The Bureau shall have the authority to
4 control, administer, and disseminate, at the discretion of the
5 Bureau, the transaction data for the purpose of enforcing federal
6 and state laws. In addition to exporting data to the Bureau, real-
7 time access to information contained in the electronic
8 methamphetamine precursor tracking service through an online portal
9 shall be provided to all law enforcement agencies within the state
10 free of charge.

11 I. The electronic methamphetamine precursor tracking service
12 shall generate a stop-sale alert if completion of a sale would
13 result in the seller or purchaser violating the quantity limits set
14 forth in Section 2-212 of Title 63 of the Oklahoma Statutes. The
15 electronic tracking service shall contain an override function that
16 may be used by a dispenser of pseudoephedrine or ephedrine products
17 who has a reasonable fear of imminent bodily harm if the sale is not
18 completed. Each instance in which the override function is utilized
19 shall be logged by the electronic tracking service.

20 J. A person who violates any of the provisions of this section
21 shall, upon conviction, be guilty of a misdemeanor punishable by a
22 fine of not more than Five Hundred Dollars (\$500.00). If the person
23 convicted is a licensed pharmacist or registered pharmacy

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1 technician, the violation shall be reported to the State Board of
2 Pharmacy for review and appropriate action.

3 SECTION 2. AMENDATORY 63 O.S. 2011, Section 2-212, is
4 amended to read as follows:

5 Section 2-212. A. The controlled substances listed in this
6 section are included in Schedule V.

7 1. Any compound, mixture, or preparation containing limited
8 quantities of any of the following narcotic drugs, which also
9 contains one or more nonnarcotic active medicinal ingredients in
10 sufficient proportion to confer upon the compound, mixture, or
11 preparation, valuable medicinal qualities other than those possessed
12 by the narcotic drug alone:

13 a. not more than two hundred (200) milligrams of codeine,
14 or any of its salts, per one hundred (100) milliliters
15 or per one hundred (100) grams,

16 b. not more than one hundred (100) milligrams of
17 dihydrocodeine, or any of its salts, per one hundred
18 (100) milliliters or per one hundred (100) grams,

19 c. not more than one hundred (100) milligrams of
20 ethylmorphine, or any of its salts, per one hundred
21 (100) milliliters or per one hundred (100) grams,

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- 1 d. not more than two and five-tenths (2.5) milligrams of
2 diphenoxylate and not less than twenty-five (25)
3 micrograms of atropine sulfate per dosage unit, or
4 e. not more than one hundred (100) milligrams of opium
5 per one hundred (100) milliliters or per one hundred
6 (100) grams.

7 2. Any compound, mixture, or preparation containing any
8 detectable quantity of base pseudoephedrine or ephedrine, its salts
9 or optical isomers, or salts of optical isomers. If any compound,
10 mixture, or preparation as specified in this paragraph is dispensed,
11 sold, or distributed in a pharmacy:

- 12 a. it shall be dispensed, sold, or distributed only by,
13 or under the supervision of, a licensed pharmacist or
14 a registered pharmacy technician, and
15 b. any person purchasing, receiving, or otherwise
16 acquiring any compound, mixture, or preparation shall
17 produce a driver license, passport, military
18 identification, or other state-issued identification
19 card and shall sign a written or electronic log,
20 receipt, or other program or mechanism approved by the
21 Oklahoma Bureau of Narcotics and Dangerous Drugs
22 Control, showing:
23 (1) the date and time of the transaction,

- 1 (2) name, address and date of birth of the purchaser,
2 (3) driver license number, passport, military
3 identification, or state-issued identification
4 number and state of residence of the purchaser,
5 (4) name and initials of the pharmacist or pharmacy
6 technician conducting the transaction,
7 (5) the product being sold, and
8 (6) total quantity, ~~in grams or milligrams,~~ of base
9 pseudoephedrine or ephedrine purchased.

10 No person shall purchase, receive, or otherwise acquire more
11 than ~~nine (9)~~ two and four-tenths (2.4) grams of any product,
12 mixture, or preparation per day or more than seven and two-tenths
13 (7.2) grams of any product, mixture, or preparation within any
14 thirty-day period or sixty (60) grams of any product, mixture, or
15 preparation within a twelve-month period. Once a person has
16 purchased, received or otherwise acquired the daily limit of two and
17 four-tenths (2.4) grams of any product, mixture or preparation, the
18 person shall be prohibited from purchasing, receiving or otherwise
19 acquiring any additional product, mixture or preparation containing
20 any detectable quantity of base pseudoephedrine or ephedrine for a
21 period of not less than seven (7) days following the last permitted
22 purchase. Provided, the requirements of this ~~subsection~~ paragraph
23 shall not apply to any quantity of such product, mixture or

1 preparation dispensed pursuant to a valid prescription. There shall
2 be no protocol or procedure mandated by any individual or corporate
3 entity that interferes with the professional duty of a pharmacist to
4 counsel and evaluate the appropriate pharmaceutical needs of a
5 patient and the exercise of the professional judgment of a
6 pharmacist as to whether it is appropriate to dispense medication as
7 set forth in this paragraph or otherwise.

8 3. Any compound, mixture, or preparation containing any
9 detectable quantity of pregabalin.

10 ~~B. The Schedule, as specified in paragraph 2 of subsection A,~~
11 ~~shall not apply to any compounds, mixtures, or preparations which~~
12 ~~are in liquid, liquid capsule, or gel capsule form if~~
13 ~~pseudoephedrine is not the only active ingredient.~~

14 ~~C.~~ The Director of the Oklahoma State Bureau of Narcotics and
15 Dangerous Drugs Control, by rule, may exempt other products from
16 this Schedule which the Director finds are not used in the illegal
17 manufacture of methamphetamine or other controlled dangerous
18 substances. A manufacturer of a drug product may apply for removal
19 of the product from the Schedule if the product is determined by the
20 Director to have been formulated in such a way as to effectively
21 prevent the conversion of the active ingredient into
22 methamphetamine.

23 ~~D. As used in this section:~~

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1 1. ~~"Gel capsule" means any soft gelatin, liquid-filled capsule~~
2 ~~that contains a liquid suspension, which, in the case of~~
3 ~~pseudoephedrine, is suspended in a matrix of glycerin, polyethylene~~
4 ~~glycol, and propylene glycol, along with other liquid substances.~~
5 ~~Regardless of product manufacturer labeling, a gelatin-covered solid~~
6 ~~does not constitute a gel capsule under this definition; and~~

7 2. ~~"Active ingredient" shall include the matrix of glycerin,~~
8 ~~polyethylene glycol, and propylene glycol that is found in liquid~~
9 ~~capsules.~~

10 SECTION 3. AMENDATORY 63 O.S. 2011, Section 2-309C, is
11 amended to read as follows:

12 Section 2-309C. A. A dispenser of a Schedule II, III, IV or V
13 controlled dangerous substance ~~including any compound mixture or~~
14 ~~preparation containing any detectable quantity of pseudoephedrine,~~
15 ~~its salts or optical isomers, or salts of optical isomers,~~ when
16 dispensed pursuant to a valid prescription, shall transmit to a
17 central repository designated by the Oklahoma State Bureau of
18 Narcotics and Dangerous Drugs Control using the American Society for
19 Automation in Pharmacy's (ASAP) Telecommunications Format for
20 Controlled Substances version designated in rules by the Oklahoma
21 State Bureau of Narcotics and Dangerous Drugs Control, the following
22 information for each dispensation:

- 23 1. Recipient's name;

- 1 2. Recipient's address;
- 2 3. Recipient's date of birth;
- 3 4. Recipient's identification number;
- 4 5. National Drug Code number of the substance dispensed;
- 5 6. Date of the dispensation;
- 6 7. Quantity of the substance dispensed;
- 7 8. Prescriber's United States Drug Enforcement Agency
- 8 registration number;
- 9 9. Dispenser's registration number; and
- 10 10. Other information as required by administrative rule.

11 B. The information required by this section shall be
12 transmitted:

- 13 1. In a format or other media designated acceptable by the
- 14 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control; and
- 15 2. Within twenty-four (24) hours of the time that the substance
- 16 is dispensed. Beginning January 1, 2012, all information shall be
- 17 submitted on a real-time log.

18 C. When a prescription is written or dispensed to a resident of
19 a nursing home or a person who is under the care of a hospice
20 program licensed pursuant to the provisions of the Oklahoma Hospice
21 Licensing Act who does not have an identification card issued by the
22 state or another form of a recipient identification number pursuant
23 to Section 2-309B of this title, a Social Security number may be

1 used for the purpose of complying with the reporting requirements
2 provided for in this section.

3 D. The provisions of subsection B of this section shall not
4 apply to a nonresident drug outlet registered pursuant to the
5 Oklahoma Pharmacy Act or to a resident drug outlet as defined in
6 Section 353.1 of Title 59 of the Oklahoma Statutes if the
7 nonresident or resident drug outlet mails or delivers a controlled
8 substance to a patient or client. Nonresident and resident drug
9 outlets shall transmit the information required in this section
10 within seven (7) days of the date that the controlled substance is
11 dispensed.

12 E. Willful failure to transmit accurate information as required
13 by this section shall be a misdemeanor punishable, upon conviction,
14 by not more than one (1) year in the county jail, or by a fine of
15 not more than One Thousand Dollars (\$1,000.00), or by both such
16 imprisonment and fine, or administrative action may be taken
17 pursuant to Section 2-304 of this title.

18 F. The Director of the Bureau shall have the authority to allow
19 paper submissions on a form designated by the Oklahoma State Bureau
20 of Narcotics and Dangerous Drugs Control, if the dispenser has an
21 appropriate hardship.

22 ~~G. The Oklahoma State Bureau of Narcotics and Dangerous Drugs~~
23 ~~Control is authorized, by any funds available to it, to implement a~~

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1 ~~real-time electronic logbook to monitor the sale of nonprescription~~
2 ~~Schedule V products containing any detectable quantity of~~
3 ~~pseudoephedrine, its salts or optical isomers, or salts of optical~~
4 ~~isomers. Dispensers of such pseudoephedrine products shall report~~
5 ~~all such sales electronically pursuant to rules promulgated by the~~
6 ~~Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.~~

7 ~~H. The Oklahoma State Bureau of Narcotics and Dangerous Drugs~~
8 ~~Control shall have the authority to adopt rules for the reporting of~~
9 ~~sales of Schedule V product containing any detectable quantity of~~
10 ~~pseudoephedrine, its salts or optical isomers, or salts of optical~~
11 ~~isomers.~~

12 SECTION 4. AMENDATORY 63 O.S. 2011, Section 2-701, is
13 amended to read as follows:

14 Section 2-701. A. There is hereby created within the Oklahoma
15 State Bureau of Narcotics and Dangerous Drugs Control a registry of
16 persons who, after November 1, 2010, have been convicted, whether
17 upon a verdict or plea of guilty or upon a verdict or plea of nolo
18 contendere, or received a suspended sentence or any deferred or
19 probationary term, or are currently serving a sentence or any form
20 of probation or parole for a crime or attempt to commit a crime
21 including, but not limited to, unlawful possession, conspiring,
22 endeavoring, manufacturing, distribution or trafficking of a
23 precursor or methamphetamines under the provisions of Section 2-322,

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 2-332, 2-401, 2-402, 2-408 or 2-415 of this title, or any crime
2 including, but not limited to, crimes involving the possession,
3 distribution, manufacturing or trafficking of methamphetamines or
4 illegal amounts of or uses of pseudoephedrine in any federal court,
5 Indian tribal court, or any court of another state if the person is
6 a resident of the State of Oklahoma or seeks to remain in the State
7 of Oklahoma in excess of ten (10) days.

8 B. It shall be unlawful for any person subject to the registry
9 created in subsection A of this section to purchase, possess or have
10 control of any Schedule V compound, mixture, or preparation
11 containing any detectable quantity of pseudoephedrine, its salts or
12 optical isomers, or salts of optical isomers. ~~As provided in~~
13 ~~Section 2-212 of this title, the provisions of this subsection shall~~
14 ~~not apply to any compounds, mixtures, or preparations which are in~~
15 ~~liquid, liquid capsule, or gel capsule form if pseudoephedrine is~~
16 ~~not the only active ingredient.~~ A prescription for pseudoephedrine
17 shall not provide an exemption for any person to this law. Any
18 person convicted of violating the provisions of this subsection
19 shall be guilty of a felony, punishable by imprisonment in the
20 custody of the Department of Corrections for not less than two (2)
21 years and not more than ten (10) years, or by a fine of not more
22 than Five Thousand Dollars (\$5,000.00), or by both such fine and
23 imprisonment.

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1 C. The registry created in subsection A of this section shall
2 be maintained by the Bureau. The registry shall be made available
3 for registrants who sell or dispense pseudoephedrine-related
4 products and to law enforcement agencies for law enforcement
5 purposes through the ~~Central Repository and the prescription~~
6 ~~monitoring program. Every registrant selling, dispensing or~~
7 ~~otherwise delivering pseudoephedrine products~~ electronic
8 methamphetamine precursor tracking service. The electronic
9 methamphetamine precursor tracking service shall ~~deny~~ generate a
10 stop-sale alert on any sale of pseudoephedrine to any individual
11 listed on the methamphetamine offender registry in real time.

12 D. The registry shall consist of the following information:

- 13 1. Name and address of the person;
- 14 2. Date of birth of the person;
- 15 3. The offense or offenses which made the person eligible for
16 inclusion on the registry;
- 17 4. The date of conviction or the date that a plea of guilty or
18 nolo contendere was accepted by the court for any violation of an
19 offense provided for in subsection A of this section;
- 20 5. The county where the offense or offenses occurred; and
- 21 6. Such other identifying data as the Bureau determines is
22 necessary to properly identify the person.

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1 E. Beginning November 1, 2010, all district court clerks shall
2 forward a copy of the judgment and sentence or other applicable
3 information relating to the disposition of the criminal case and
4 date of birth of all persons who are subject to the provisions of
5 this act for a violation of the offenses described in subsection A
6 of this section to the Bureau. The information shall be sent in an
7 electronic format in a manner prescribed by the Bureau within ~~thirty~~
8 ~~(30)~~ ten (10) days of the date of final disposition of the case.
9 Any person subject to the registry pursuant to subsection A of this
10 section, having received a deferred sentence or conviction in a
11 federal court, Indian tribal court, or any court of another state,
12 shall be required to register and submit a methamphetamine offender
13 registration form in a format prescribed by the Bureau within ten
14 (10) days of entering the State of Oklahoma or if incarcerated in a
15 federal institution within the boundaries of Oklahoma, within ten
16 (10) days of release from said institution. Failure to submit the
17 form required by this subsection shall constitute a misdemeanor.

18 F. Upon receipt of the information provided by the district
19 court clerk, the Bureau shall transmit, in an electronic format to
20 the electronic methamphetamine precursor tracking service at least
21 every seven (7) days, the name of any person placed on the
22 methamphetamine offender registry as provided in this section. The
23 information transmitted to the electronic tracking service shall

1 include the first, middle, and last name of the person, and the
2 address and date of birth of the person. The electronic
3 methamphetamine precursor tracking service shall be designed to
4 generate a stop-sale alert for any person who is on the
5 methamphetamine offender registry and whose name, address and date
6 of birth have been transmitted by the Bureau to the electronic
7 tracking service.

8 G. The Bureau shall remove from the methamphetamine offender
9 registry the name and other identifying information of a person who
10 has been convicted of a violation of any of the offenses described
11 in subsection A of this section ten (10) years after the date of the
12 most recent judgment and sentence. Any person having received a
13 deferred sentence that expires prior to the ten-year time limitation
14 may apply to the Bureau to be removed from the registry upon the
15 completion of the deferred sentence by providing to the Bureau a
16 certified copy of the dismissal of the case by certified mail. The
17 Bureau may remove the person from the methamphetamine offender
18 registry upon expiration of the deferred sentence. The Bureau shall
19 also be required to notify the provider of the electronic
20 methamphetamine precursor tracking service when a person is removed
21 from the methamphetamine offender registry. Upon notification from
22 the Bureau, the provider of the electronic tracking service shall
23 remove the name of the person from the electronic methamphetamine

1 precursor tracking service and the person shall thereafter be
2 permitted to purchase pseudoephedrine-related products.

3 ~~G.~~ H. It shall be a violation for any person to assist another
4 person who is subject to the registry in the purchase of any
5 pseudoephedrine products. Any person convicted of violating the
6 provisions of this subsection shall, for a first offense, be guilty
7 of a misdemeanor, punishable by incarceration in the county jail for
8 not more than one (1) year, or by a fine of not more than One
9 Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.
10 Any second or subsequent conviction for a violation of this
11 subsection shall be a felony, punishable by incarceration in the
12 custody of the Department of Corrections for not more than two (2)
13 years, or by a fine of not less than Two Thousand Five Hundred
14 Dollars (\$2,500.00) or by both such fine and imprisonment. For the
15 purposes of this subsection, knowledge that a person was subject to
16 the methamphetamine offender registry may be proven through court
17 testimony or any other public notice or publicly available record
18 including, but not limited to, court records maintained by the
19 Oklahoma Supreme Court Network and the Oklahoma Court Information
20 System.

21 I. On or prior to November 1, 2011, the Oklahoma State Bureau
22 of Narcotics and Dangerous Drugs Control shall maintain a
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1 methamphetamine offender registry website available for viewing by
2 the public.

3 SECTION 5. This act shall become effective September 1, 2012.

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5 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 04/10/2012 -
6 DO PASS, As Amended.

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