

1 HB490
2 199654-1
3 By Representative Hall
4 RFD: Judiciary
5 First Read: 23-APR-19

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8 SYNOPSIS: Existing law prohibits the sale of drug
9 paraphernalia, as well as the unauthorized sale of
10 controlled substances. Existing law also imposes
11 additional criminal penalties for the sale of
12 controlled substances when the sale takes place on
13 or within three miles of a school campus.

14 This bill would prohibit the sale of drug
15 paraphernalia on or within three miles of a school
16 campus and would prohibit the unauthorized sale of
17 controlled substances and the sale of drug
18 paraphernalia on the grounds of or within three
19 miles of a church or place of worship, and would
20 impose criminal penalties.

21 Amendment 621 of the Constitution of Alabama
22 of 1901, now appearing as Section 111.05 of the
23 Official Recompilation of the Constitution of
24 Alabama of 1901, as amended, prohibits a general
25 law whose purpose or effect would be to require a
26 new or increased expenditure of local funds from
27 becoming effective with regard to a local

1 governmental entity without enactment by a 2/3 vote
2 unless: it comes within one of a number of
3 specified exceptions; it is approved by the
4 affected entity; or the Legislature appropriates
5 funds, or provides a local source of revenue, to
6 the entity for the purpose.

7 The purpose or effect of this bill would be
8 to require a new or increased expenditure of local
9 funds within the meaning of the amendment. However,
10 the bill does not require approval of a local
11 governmental entity or enactment by a 2/3 vote to
12 become effective because it comes within one of the
13 specified exceptions contained in the amendment.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT
18

19 To amend Sections 13A-12-250 and 13A-12-260, Code of
20 Alabama 1975; to prohibit the sale of drug paraphernalia on or
21 within three miles of a school campus and would prohibit the
22 unauthorized sale of controlled substances and the sale of
23 drug paraphernalia on the grounds of or within three miles of
24 a church or place of worship; to impose criminal penalties;
25 and in connection therewith would have as its purpose or
26 effect the requirement of a new or increased expenditure of
27 local funds within the meaning of Amendment 621 of the

1 Constitution of Alabama of 1901, now appearing as Section
2 111.05 of the Official ReCompilation of the Constitution of
3 Alabama of 1901, as amended.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Sections 13A-12-250 and 13A-12-260, Code
6 of Alabama 1975, are amended to read as follows:

7 "§13A-12-250.

8 "(a) In addition to any penalties ~~heretofore or~~
9 ~~hereafter~~ provided by law for any person convicted of an
10 unlawful sale of a controlled substance, there is ~~hereby~~
11 ~~imposed~~ a penalty of five years incarceration in a state
12 corrections facility with no provision for probation if the
13 ~~situs of such~~ unlawful sale was conducted on the campus or
14 within a three-mile radius of the campus boundaries of any
15 public or private school, college, university or other
16 educational institution in this state.

17 "(b) In addition to any penalties provided by law
18 for any person convicted of an unlawful sale of a controlled
19 substance, there is a penalty of five years' incarceration in
20 a state corrections facility with no provision for probation
21 if the unlawful sale was conducted on the grounds or within a
22 three-mile radius of any church or place of worship in this
23 state.

24 "§13A-12-260.

25 "~~(a) Definition of "drug paraphernalia"~~. As used in
26 this section, the term "drug paraphernalia" means all
27 equipment, products, and materials of any kind which are used,

1 intended for use, or designed for use, in planting,
2 propagating, cultivating, growing, harvesting, manufacturing,
3 compounding, converting, producing, processing, preparing,
4 testing, analyzing, packaging, repackaging, storing,
5 containing, concealing, injecting, ingesting, inhaling, or
6 otherwise introducing into the human body a controlled
7 substance in violation of the controlled substances laws of
8 this state. It includes but is not limited to:

9 "(1) Kits used, intended for use, or designed for
10 use in planting, propagating, cultivating, growing, or
11 harvesting of any species of plant which is a controlled
12 substance or from which a controlled substance can be
13 derived7.

14 "(2) Kits used, intended for use, or designed for
15 use in manufacturing, compounding, converting, producing,
16 processing, or preparing controlled substances7.

17 "(3) Isomerization devices used, intended for use,
18 or designed for use in increasing the potency of any species
19 of plant which is a controlled substance7.

20 "(4) Testing equipment used, intended for use, or
21 designed for use in identifying, or in analyzing the strength,
22 effectiveness, or purity of controlled substances7.

23 "(5) Scales and balances used, intended for use, or
24 designed for use in weighing or measuring controlled
25 substances7.

26 "(6) Dilutants and adulterants, such as quinine
27 hydrochloride, mannitol, mannite, dextrose and lactose, used,

1 intended for use, or designed for use in cutting controlled
2 substances7.

3 "(7) Separation gins and sifters used, intended for
4 use, or designed for use in removing twigs and seeds from, or
5 in otherwise cleaning or refining, marihuana7.

6 "(8) Blenders, bowls, containers, spoons and mixing
7 devices used, intended for use, or designed for use in
8 compounding controlled substances7.

9 "(9) Capsules, balloons, envelopes and other
10 containers used, intended for use, or designed for use in
11 packaging small quantities of controlled substances7.

12 "(10) Containers and other objects used, intended
13 for use, or designed for use in storing or concealing
14 controlled substances7.

15 "(11) Hypodermic syringes, needles and other objects
16 used, intended for use, or designed for use in parenterally
17 injecting controlled substances into the human body7.

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

22 "a. Metal, wooden, acrylic, glass, stone, plastic,
23 or ceramic pipes with or without screens, permanent screens,
24 hashish heads, or punctured metal bowls7.

25 "b. Water pipes7.

26 "c. Carburetion tubes and devices7.

27 "d. Smoking and carburetion masks7.

1 "e. Roach clips: Meaning objects used to hold
2 burning material, such as a marihuana cigarette, that has
3 become too small or too short to be held in the hand7.

4 "f. Miniature cocaine spoons, and cocaine vials7.

5 "g. Chamber pipes7.

6 "h. Carburetor pipes7.

7 "i. Electric pipes7.

8 "j. Air-driven pipes7.

9 "k. Chillums7.

10 "l. Bong7.

11 "m. Ice pipes or chillers7.

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

16 "~~(b) Factors in determining whether object is drug~~
17 ~~paraphernalia.~~ In determining whether an object is drug
18 paraphernalia, a court or other authority shall consider, in
19 addition to all other logically relevant factors, the
20 following:

21 "(1) Statements by an owner or by anyone in control
22 of the object concerning its use7.

23 "(2) Prior convictions, if any, of an owner, or of
24 anyone in control of the object, under any state or federal
25 law relating to any controlled substance7.

1 "(3) The proximity of the object, in time and space,
2 to a direct violation of this section or to a controlled
3 substance7.

4 "(4) The existence of any residue of controlled
5 substances on the object7.

6 "(5) Direct or circumstantial evidence of the intent
7 of an owner, or of anyone in control of the object, to deliver
8 it to persons whom he knows intend to use the object to
9 facilitate a violation of the controlled substances laws of
10 this state; the innocence of an owner, or of anyone in control
11 of the object, as to a direct violation of such laws shall not
12 prevent a finding that the object is intended for use, or
13 designed for use as drug paraphernalia7.

14 "(6) Instructions, oral or written, provided with
15 the object concerning its use7.

16 "(7) Descriptive materials accompanying the object
17 which explain or depict its use7.

18 "(8) National and local advertising concerning its
19 use7.

20 "(9) The manner in which the object is displayed for
21 sale7.

22 "(10) Whether the owner, or anyone in control of the
23 object, is a legitimate supplier of like or related items to
24 the community, such as a licensed distributor or dealer of
25 tobacco products7.

1 "(11) Direct or circumstantial evidence of the ratio
2 of sales of the object or objects to the total sales of the
3 business enterprise7.

4 "(12) The existence and scope of legitimate uses for
5 the object in the community7.

6 "(13) Expert testimony concerning its use.

7 "~~(c) Use or possession with intent to use.~~ It shall
8 be unlawful for any person to use, ~~or to~~ possess with intent
9 to use, or to use to inject, ingest, inhale or otherwise
10 introduce into the human body, drug paraphernalia to plant,
11 propagate, cultivate, grow, harvest, compound, convert,
12 produce, process, prepare, test, analyze, pack, repack, store,
13 contain or conceal a controlled substance in violation of the
14 controlled substances laws of this state. Any person who
15 violates this subsection is guilty of a Class A misdemeanor
16 and upon conviction shall be punished as prescribed by law.

17 "(d) (1) It shall be unlawful for any person to use,
18 deliver, ~~or~~ sell, possess with intent to deliver or sell, ~~or~~
19 manufacture with intent to deliver or sell, or to possess with
20 intent to use7 drug paraphernalia to manufacture a controlled
21 substance in violation of the controlled substances laws of
22 this state.

23 "(2) Any person who violates this subsection is
24 guilty of a Class C felony. If a person is in violation of
25 this subsection and is in possession of a firearm at the time
26 of the offense, the person shall be guilty of a Class B
27 felony.

1 "~~(e) Delivery or sale.~~ (1) It shall be unlawful for
2 any person to deliver or sell, possess with intent to deliver
3 or sell, or manufacture with intent to deliver or sell drug
4 paraphernalia, knowing that it will be used to plant,
5 propagate, cultivate, grow, harvest, compound, convert,
6 produce, process, prepare, test, analyze, pack, repack, store,
7 contain, conceal, inject, ingest, inhale, or otherwise
8 introduce into the human body a controlled substance in
9 violation of the controlled substances laws of this state. Any
10 person who violates this section is guilty of a Class A
11 misdemeanor and upon conviction shall be punished as
12 prescribed by law. A person who is convicted of a subsequent
13 violation of this subsection shall be guilty of a Class C
14 felony and punished as prescribed by law. Any person convicted
15 of violating this subsection who previously has been convicted
16 of violating subdivision (2) of this subsection shall be
17 subject to the same penalties specified for subsequent
18 violations of this subsection.

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

25 "(3) In addition to any penalties provided by law
26 for any person convicted of the sale of drug paraphernalia,
27 there is a penalty of five years' incarceration in a state

1 corrections facility with no provision for probation if the
2 sale was conducted on the campus or within a three-mile radius
3 of the campus boundaries of any public or private school,
4 college, university, or other educational institution in this
5 state.

6 "(4) In addition to any penalties provided by law
7 for any person convicted of the sale of drug paraphernalia,
8 there is a penalty of five years' incarceration in a state
9 corrections facility with no provision for probation if the
10 sale was conducted on the grounds or within a three-mile
11 radius of any church or place of worship in this state.

12 "(f) ~~Contraband; forfeiture.~~ All drug paraphernalia
13 used in violation of this section shall be contraband and
14 subject to the forfeiture laws of this state and Section
15 20-2-93 as amended, in particular."

16 Section 2. 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 3. This act shall become effective on the
25 first day of the third month following its passage and
26 approval by the Governor, or its otherwise becoming law.