

1 SB168  
2 216297-2  
3 By Senators McClendon, Coleman-Madison, Hatcher, Williams,  
4 Givhan, Butler and Beasley  
5 RFD: Healthcare  
6 First Read: 02-FEB-22

SYNOPSIS: Under existing law, it is unlawful for a person to use or possess to use drug paraphernalia for the purpose of testing or analyzing a controlled substance.

It is unlawful to possess, deliver, or sell testing equipment for the purpose of knowing they will be used to violate the controlled substances law.

This bill would remove the prohibition to possess, deliver, or sell testing equipment designed to detect the presence of fentanyl or any synthetic controlled substance fentanyl analogue.

A BILL  
TO BE ENTITLED  
AN ACT

Relating to controlled substances; to amend Section 13A-12-260 of the Code of Alabama 1975, to exempt the distribution or possession of certain items used to test for

1 the presence of fentanyl or any synthetic controlled substance  
2 fentanyl analogue.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 13A-12-260, Code of Alabama 1975,  
5 is amended to read as follows:

6 "§13A-12-260.

7 "~~(a) Definition of "drug paraphernalia"~~. As used in  
8 this section, the term "drug paraphernalia" means all  
9 equipment, products, and materials of any kind which are used,  
10 intended for use, or designed for use, in planting,  
11 propagating, cultivating, growing, harvesting, manufacturing,  
12 compounding, converting, producing, processing, preparing,  
13 testing, analyzing, packaging, repackaging, storing,  
14 containing, concealing, injecting, ingesting, inhaling, or  
15 otherwise introducing into the human body a controlled  
16 substance in violation of the controlled substances laws of  
17 this state. It includes, but is not limited to, all of the  
18 following:

19 "(1) Kits used, intended for use, or designed for  
20 use in planting, propagating, cultivating, growing, or  
21 harvesting of any species of plant which is a controlled  
22 substance or from which a controlled substance can be  
23 derived~~;~~.

24 "(2) Kits used, intended for use, or designed for  
25 use in manufacturing, compounding, converting, producing,  
26 processing, or preparing controlled substances~~;~~.

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

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

7           "(5) Scales and balances used, intended for use, or  
8 designed for use in weighing or measuring controlled  
9 substances7.

10          "(6) Dilutants and adulterants, such as quinine  
11 hydrochloride, mannitol, mannite, dextrose, and lactose, used,  
12 intended for use, or designed for use in cutting controlled  
13 substances7.

14          "(7) Separation gins and sifters used, intended for  
15 use, or designed for use in removing twigs and seeds from, or  
16 in otherwise cleaning or refining, ~~marihuana~~ marijuana.

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

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

23          "(10) Containers and other objects used, intended  
24 for use, or designed for use in storing or concealing  
25 controlled substances7.

26          "(11) Hypodermic syringes, needles, and other  
27 objects used, intended for use, or designed for use in

1 parenterally injecting controlled substances into the human  
2 body7.

3 "(12) Objects used, intended for use, or designed  
4 for use in ingesting, inhaling, or otherwise introducing  
5 ~~marihuana~~ marijuana, ~~tetrahydrocannabinols~~  
6 tetrahydrocannabinols, cocaine, hashish, or hashish oil into  
7 the human body, ~~such as~~ including, but not limited to:

8 "a. Metal, wooden, acrylic, glass, stone, plastic,  
9 or ceramic pipes with or without screens, permanent screens,  
10 hashish heads, or punctured metal bowls7.

11 "b. Water pipes7.

12 "c. Carburetion tubes and devices7.

13 "d. Smoking and carburetion masks7.

14 "e. Roach clips: Meaning objects used to hold  
15 burning material, such as a ~~marihuana~~ marijuana cigarette,  
16 that has become too small or too short to be held in the  
17 hand7.

18 "f. Miniature cocaine spoons7 and cocaine vials7.

19 "g. Chamber pipes7.

20 "h. Carburetor pipes7.

21 "i. Electric pipes7.

22 "j. Air-driven pipes7.

23 "k. Chillums7.

24 "l. Bong7.

25 "m. Ice pipes or chillers7.

26 "n. Glass tubes which are hollow, cylindrical items  
27 made of glass which are smaller than three-quarters of an inch

1 in diameter, shorter than 12 inches in length, and which are  
2 not sealed with glass at both ends.

3 ~~"(b) Factors in determining whether object is drug~~  
4 ~~paraphernalia.~~ In determining whether an object is drug  
5 paraphernalia, a court or other authority shall consider, in  
6 addition to all other logically relevant factors, all of the  
7 following:

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

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

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

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

18 "(5) Direct or circumstantial evidence of the intent  
19 of an owner, or of anyone in control of the object, to deliver  
20 it to persons whom he knows intend to use the object to  
21 facilitate a violation of the controlled substances laws of  
22 this state; the innocence of an owner, or of anyone in control  
23 of the object, as to a direct violation of such laws shall not  
24 prevent a finding that the object is intended for use, or  
25 designed for use, as drug paraphernalia7.

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

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

3           "(8) National and local advertising concerning its  
4 use7.

5           "(9) The manner in which the object is displayed for  
6 sale7.

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

11           "(11) Direct or circumstantial evidence of the ratio  
12 of sales of the object or objects to the total sales of the  
13 business enterprise7.

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

16           "(13) Expert testimony concerning its use.

17           "(c) (1) ~~Use or possession with intent to use.~~ It  
18 shall be unlawful for any person to use, or to possess with  
19 intent to use, or to use to inject, ingest, inhale, or  
20 otherwise introduce into the human body, drug paraphernalia to  
21 plant, propagate, cultivate, grow, harvest, compound, convert,  
22 produce, process, prepare, test, analyze, pack, repack, store,  
23 contain, or conceal a controlled substance in violation of the  
24 controlled substances laws of this state.

25           "(2) Any person who violates this subsection is  
26 guilty of a Class A misdemeanor and upon conviction shall be  
27 punished as prescribed by law.

1           "(d) (1) It shall be unlawful for any person to use,  
2 deliver, or sell, possess with intent to deliver or sell, or  
3 manufacture with intent to deliver or sell, or to possess with  
4 intent to use, drug paraphernalia to manufacture a controlled  
5 substance in violation of the controlled substances laws of  
6 this state.

7           "(2) Any person who violates this subsection is  
8 guilty of a Class C felony. If a person is in violation of  
9 this subsection and is in possession of a firearm at the time  
10 of the offense, the person shall be guilty of a Class B  
11 felony.

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

1 subject to the same penalties specified for subsequent  
2 violations of this subsection.

3 "(2) Any person 18 years of age or over who violates  
4 subdivision (1) of this subsection by delivering drug  
5 paraphernalia to a person under 18 years of age who is at  
6 least three years his junior shall be guilty of a Class B  
7 felony and upon conviction shall be punished as prescribed by  
8 law.

9 "(f) Notwithstanding subdivision (e) (1), a person  
10 may possess, deliver, or sell testing equipment designed to  
11 detect the presence of fentanyl or any synthetic controlled  
12 substance fentanyl analogue, as described in Sections 20-2-23  
13 and 20-2-25.

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

18 Section 2. This act shall become effective on the  
19 first day of the third month following its passage and  
20 approval by the Governor, or its otherwise becoming law.