HB500

194592-1

By Representative Wilcox

RFD: State Government

First Read: 23-APR-19
SYNOPSIS: Existing law criminalizes littering and provides penalties.

This bill would provide additional penalties for criminal littering and include enhanced penalties for littering of cigarettes, cigars, containers of urine, restaurant food containers, and other specified waste items.

Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for the purpose.
The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of the amendment. However, the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in the amendment.

A BILL
TO BE ENTITLED
AN ACT

Relating to littering; to amend Sections 13A-7-29, 23-5-6, 32-5-76, 32-5A-60, and 33-6-10, Code of Alabama 1975, to provide additional penalties for criminal littering to include enhanced penalties for littering of cigarettes, cigars, containers of urine, restaurant food containers, and other specified waste items; to include within the enhanced penalties increased fines, mandatory community service requirements, and assessments of driver license points when littering is committed from a motor vehicle; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.
BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 13A-7-29, 23-5-6, 32-5-76, 32-5A-60, and 33-6-10, Code of Alabama 1975, are amended to read as follows:

"§13A-7-29.

"(a) A person commits the crime of criminal littering if he or she engages in any of the following acts:

"(1) Knowingly deposits in any manner litter on any public or private property or in any public or private waters without permission to do so. For purposes of this subdivision, any series of items found in the garbage, trash, or other discarded material including, but not limited to, bank statements, utility bills, bank card bills, and other financial documents, clearly bearing the name of a person shall constitute a rebuttable presumption that the person whose name appears on the material knowingly deposited the litter. Advertising, marketing, and campaign materials and literature shall not be sufficient to constitute a rebuttable presumption of criminal littering under this subsection.

"(2) Negligently deposits, in any manner, glass or other dangerously pointed or edged objects on or adjacent to water to which the public has lawful access for bathing, swimming, or fishing, or on or upon a public highway or within the right-of-way thereof.

"(3) Discharges sewage, oil products, or litter from a watercraft vessel of more than 25 feet in length into a
river, inland lake, or stream within the state or within three 
miles of the shoreline territorial waters of the state.

"(4) a. Drops or permits to be dropped or thrown

Throws, drops, or permits to be thrown or dropped any litter
upon or alongside any highway, road, street, or public
right-of-way any destructive or injurious material and does
not immediately remove the same or cause it to be removed; or

"b. Removes a wrecked or damaged vehicle from a
highway and does not remove glass or other injurious substance
dropped upon the highway from such the vehicle.

"(b) "Litter" For the purposes of this section, 
litter means rubbish, refuse, waste material, garbage, dead
animals or fowl, offal, paper, glass, cans, bottles, trash,
scrap metal, debris, plastic, cigarettes, cigars, containers
of urine, food containers, rubber tires, or any foreign
substance of whatever kind and description, and whether or not
it is of value. Any agricultural product in its natural state
that is unintentionally deposited on a public highway, road,
street, or public right-of-way shall not be deemed is not
litter for purposes of this section or Section 32-5-76. Any
other law or ordinance to the contrary notwithstanding, the
unintentional depositing of an agricultural product in its
natural state on a public highway, road, street, or
right-of-way shall not constitute unlawful littering or any
similarly prohibited activity.
"(c) It is no defense under subsection subdivisions (a)(3) and (a)(4) that the actor did not intend, or was unaware of, the act charged.

"(d)(1) Criminal littering is a Class C misdemeanor. The minimum fine for the first conviction shall be two hundred fifty dollars ($250), and the fine up to five hundred dollars ($500). The punishment for the second and any subsequent conviction shall be five hundred dollars ($500) for each conviction include either a fine of up to one thousand dollars ($1,000) and up to 100 hours of community service in the form of picking up litter along highways, roads, streets, public rights-of-way, public sidewalks, public walkways, or public waterways, or by a fine of not less than two thousand dollars ($2,000) and not more than three thousand dollars ($3,000).

"(2) In addition to the penalties provided in subdivision (1), littering of any of the following in violation of subsection (a) shall result in an additional fine of up to five hundred dollars ($500) per violation:

"a. Cigarettes or cigars.

"b. Containers of urine.

"c. Food containers.

"(e) The Fifty percent of the fine from such a conviction under this section shall be awarded and distributed by the court to the municipal, and/or State General Fund and 50 percent to the municipality or county, and/or State General Fund, or both, following a determination by the court of whose
law enforcement agencies or departments have been a
participant in the arrest or citation resulting in the fine.
Such The award and distribution to the county and municipality
shall be made on the basis of the percentage as determined by
the court, which the respective agency or department
contributed to the police work resulting in the arrest, and
shall be spent by the governing body on law and litter
enforcement purposes only. Litter enforcement may include, but
not be limited to, anti-littering education, publication and
distribution of related educational materials, and
anti-littering advertising.

"(f) No action for criminal littering based on
evidence that creates a rebuttable presumption under
subsection subdivision (a)(1) shall be brought against a
person by or on behalf of a county or municipal governing body
unless he or she has been given written notice by a designee
of the governing body that items found in an accumulation of
garbage, trash, or other discarded materials contain his or
her name, and that, under subsection subdivision (a)(1), there
is a rebuttable presumption that he or she knowingly deposited
the litter. The notice shall advise the person that criminal
littering is a Class C misdemeanor, and shall provide that,
unless the person can present satisfactory information or
evidence to rebut the presumption to the designee of the
governing body within 15 days from the date of the notice, an
action for criminal littering may be filed against him or her
in the appropriate court. If the person responds to the notice
and presents information or evidence to the designee of the
1 governing body, the designee shall review the information or
2 evidence presented and make a determination as to whether or
3 not an action should be brought against the person for
4 criminal littering. The designee shall provide written notice
5 to the person of its determination, and if the intent is to
6 proceed with an action for criminal littering, the notice
7 shall be sent before any action is filed.
8
9 "(g) Upon approval of the county commission, the
10 county license inspector and his or her deputies employed
11 under Section 40-12-10 shall have the same authority to issue
12 citations against persons violating this section as county
13 license inspectors have with regard to persons violating
14 revenue laws as provided in Section 40-12-10. In addition, the
15 county solid waste officer, as defined in subsection (b) of
16 Section 22-27-3, shall have the same authority to issue
17 citations against persons violating this section as solid
18 waste officers have with regard to persons violating the Solid
19 Wastes Disposal Act pursuant to subsection (b) of Section
20 22-27-3.
21
22 "(h) Nothing herein in this section shall authorize
23 a county license inspector or solid waste officer to take any
24 person into custody pursuant to this section unless the
25 inspector or officer is a law enforcement officer employed by
26 a law enforcement agency as defined in Section 36-21-40.
27
28 "$23-5-6.
"If a misdemeanor littering is committed as set forth in Section 13A-7-29 or Section 32-5A-60 from a motor vehicle, the driver of the vehicle shall be presumed to be the offender.

§32-5-76.

"(a)(1) Whoever willfully and knowingly operates, owns, or causes to be operated on any public highway, road, street, or public right-of-way a motor vehicle so loaded with gravel, rock, slag, bricks, in such any manner or in such any condition that the contents of the vehicle spill out and cause it to be deposited upon the highway, road, street, or public right-of-way is guilty of a Class C B misdemeanor and upon conviction shall be fined not more than $500.00, pursuant to Section 13A-7-29, the criminal littering statute, and shall receive an assessment by the Alabama State Law Enforcement Agency of three points on his or her driver license.

"(2) The Alabama State Law Enforcement Agency shall adopt rules to implement this subsection.

"(b) No vehicle shall be driven or moved on any highway unless such the vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such the roadway.

"(c)(1) Whoever willfully and knowingly operates, owns, or causes to be operated on a public highway, road,
street, or public right-of-way, a motor vehicle in such any manner or in such any condition that litter is caused or allowed to be deposited upon the highway, road, or street or public right-of-way, is guilty of a Class E misdemeanor and upon conviction shall be fined not more than $500.00, pursuant to Section 13A-7-29, the criminal littering statute, and shall receive an assessment by the Alabama State Law Enforcement Agency of three points on his or her driver license.

"(2) The Alabama State Law Enforcement Agency shall adopt rules to implement this subsection.

"(d) Any agricultural product in its natural state that is unintentionally deposited upon a highway, road, street, or public right-of-way does not constitute litter for purposes of this section or Section 13A-7-29.

"§32-5A-60.

"(a) No person shall throw or deposit upon or alongside any highway, road or street, or public right-of-way any glass bottle, glass, nails, tacks, wire, cans, cigarettes, cigars, containers of urine, or any other substance likely to injure any person, animal, or vehicle upon such or alongside the highway, road, street, or public right-of-way.

"(b) Any person who throws, drops, or permits to be dropped or thrown thrown or dropped, upon any highway any destructive or injurious material shall immediately remove the same material or cause it to be removed.

"(c) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other
injurious substance dropped upon the highway from such the vehicle.

"(d) No person shall throw or drop litter or allow litter to be thrown from a motor vehicle onto or upon or alongside any highway, road or street, or public right-of-way.

"(e) The uniform traffic citation may be used for any violation of this section.

"(f) "Litter" as used in this section is the same as defined in Section 13A-7-29.

"(g)(1) Notwithstanding the provisions of Section 32-5A-266, any person violating the provisions of this section shall be guilty of a Class C misdemeanor and upon conviction shall be fined not more than $500.00, pursuant to Section 13A-7-29, the criminal littering statute. Any person violating subsection (d) of this section shall receive an assessment by the Alabama State Law Enforcement Agency of three points on his or her driver license.

"(2) The Alabama State Law Enforcement Agency shall adopt rules to implement this subsection.

"§33-6-10.

"(a) The provisions of this chapter and rules, regulations and orders adopted hereunder under this chapter shall be enforced by the State Board of Health and the State Department of Conservation and Natural Resources according to rules and regulations hereunder adopted by the board and department.
"(b) Any person may complain under oath to a
magistrate, district attorney, or grand jury concerning a
violation of the provisions of this chapter or of a rule and
regulation promulgated thereunder adopted under this chapter
and if a warrant is issued by said the magistrate or district
attorney, or indictment returned by a grand jury, said the
charge shall be tried in court to which said the warrant is
returnable, and said the warrant may be made returnable to a
district court or to the circuit court and said the courts
shall have original and concurrent jurisdiction of said the
offense, or if an indictment is returned, the circuit court
shall have jurisdiction of said the offense. In such cases
convicted defendants Convicted persons may appeal as now
provided by law. Whether criminal proceedings have been
commenced or not, the state health officer is authorized to
may bring a civil action in the circuit court against the
owner, operator, or person in charge of any vessel or
watercraft to compel compliance with the provisions of this
chapter or the rules and regulations promulgated thereunder
adopted under this chapter, and said the circuit court shall
have jurisdiction of said the case.

"(c) Any individual who discharges from any
watercraft any sewage or litter into the waters of this state
or any owner or operator of any watercraft who knowingly
allows or permits such discharge in violation of any provision
of this chapter, or without a permit from the State Board of
Health, when such a permit is required, or if any person shall
violate violates any rule, regulation or order promulgated
adopted under this chapter, such that person shall be guilty
of a Class B misdemeanor and on conviction shall be punished
pursuant to Section 13A-7-29, the criminal littering statute
by a fine of not less than $10.00 nor more than $1,000.00, or
by imprisonment at hard labor in the county jail for not over
12 months, or by both fine and imprisonment; and each such
 discharge of sewage or litter shall constitute a separate
offense."

Section 2. Although this bill would have as its
purpose or effect the requirement of a new or increased
expenditure of local funds, the bill is excluded from further
requirements and application under Amendment 621, now
appearing as Section 111.05 of the Official Recompilation of
the Constitution of Alabama of 1901, as amended, because the
bill defines a new crime or amends the definition of an
existing crime.

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