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3 HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HB56
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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 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 penalties; and in
25 connection therewith would have as its purpose or effect the
26 requirement of a new or increased expenditure of local funds
27 within the meaning of Amendment 621 of the Constitution of

1 Alabama of 1901, now appearing as Section 111.05 of the
2 Official Recompilation of the Constitution of Alabama of 1901,
3 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~~ imposed a fine of two hundred fifty dollars
14 (\$250) if the unlawful sale was conducted on the campus or
15 within a three-mile radius of the campus boundaries of any
16 public or private school, college, university, or other
17 educational institution in this state.

18 "(b) In addition to any penalties provided by law
19 for any person convicted of an unlawful sale of a controlled
20 substance, there is imposed a fine of two hundred fifty
21 dollars (\$250) if the unlawful sale was conducted on the
22 grounds or within a three-mile radius of any church or place
23 of worship in this 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 derived;~~

13 ~~"(2) Kits used, intended for use, or designed for~~
14 ~~use in manufacturing, compounding, converting, producing,~~
15 ~~processing, or preparing controlled substances;~~

16 ~~"(3) Isomerization devices used, intended for use,~~
17 ~~or designed for use in increasing the potency of any species~~
18 ~~of plant which is a controlled substance;~~

19 ~~"(4) Testing equipment used, intended for use, or~~
20 ~~designed for use in identifying, or in analyzing the strength,~~
21 ~~effectiveness, or purity of controlled substances;~~

22 ~~"(5) Scales and balances used, intended for use, or~~
23 ~~designed for use in weighing or measuring controlled~~
24 ~~substances;~~

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

1 ~~intended for use, or designed for use in cutting controlled~~
2 ~~substances;~~

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, marihuana;~~

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

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

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

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 body;~~

18 ~~"(12) Objects used, intended for use, or designed~~
19 ~~for use in ingesting, inhaling, or otherwise introducing~~
20 ~~marihuana, tetrahydro cannabinoids, 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 bowls;~~

25 ~~"b. Water pipes;~~

26 ~~"c. Carburetion tubes and devices;~~

27 ~~"d. Smoking and carburetion masks;~~

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 hand;~~

4 ~~"f. Miniature cocaine spoons, and cocaine vials;~~

5 ~~"g. Chamber pipes;~~

6 ~~"h. Carburetor pipes;~~

7 ~~"i. Electric pipes;~~

8 ~~"j. Air-driven pipes;~~

9 ~~"k. Chillums;~~

10 ~~"l. Bonges;~~

11 ~~"m. Ice pipes or chillers;~~

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 "(a) As used in this section, the term "drug
17 paraphernalia" means any equipment, product, or material of
18 any kind which is primarily intended or designed for use in
19 manufacturing, compounding, converting, concealing, producing,
20 processing, preparing, injecting, ingesting, inhaling, or
21 otherwise introducing into the human body a controlled
22 substance, possession of which is unlawful under the Alabama
23 Uniform Controlled Substances Act (Section 20-2-1, et seq), as
24 well as items primarily intended or designed for use in
25 ingesting, inhaling, or otherwise introducing marijuana,
26 cocaine, hashish, hashish oil, PCP, methamphetamine, or
27 amphetamines into the human body, including:

1 "(1) Metal, wooden, acrylic, glass, stone, plastic,
2 or ceramic pipes with or without screens, permanent screens,
3 hashish heads, or punctured metal bowls.

4 "(2) Water pipes.

5 "(3) Carburetion tubes and devices.

6 "(4) Smoking and carburetion masks.

7 "(5) Roach clips.

8 "(6) Miniature spoons with level capacities of
9 one-tenth cubic centimeter or less.

10 "(7) Chamber pipes.

11 "(8) Carburetor pipes.

12 "(9) Electric pipes.

13 "(10) Air-driven pipes.

14 "(11) Chillums.

15 "(12) Bonges.

16 "(13) Ice pipes or chillers.

17 "(14) Wired cigarette papers.

18 "(15) Cocaine freebase kits.

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

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

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

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

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

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

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

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

21 "(8) National and local advertising concerning its
22 use7.

23 "(9) The manner in which the object is displayed for
24 sale7.

25 "(10) Whether the owner, or anyone in control of the
26 object, is a legitimate supplier of like or related items to

1 the community, such as a licensed distributor or dealer of
2 tobacco products7.

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

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

8 "(13) Expert testimony concerning its use.

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

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

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

1 of the offense, the person shall be guilty of a Class B
2 felony.

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

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

1 "(3) In addition to any penalties provided by law
2 for any person convicted of the sale of drug paraphernalia,
3 there is imposed a fine of two hundred fifty dollars (\$250) if
4 the sale was conducted on the campus or within a three-mile
5 radius of the campus boundaries of any public or private
6 school, college, university, or other educational institution
7 in this state.

8 ~~"(f) Contraband; forfeiture.~~ All drug paraphernalia
9 used in violation of this section shall be contraband and
10 subject to the forfeiture laws of this state and Section
11 20-2-93 as amended, in particular."

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

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