

1 HB564
2 125349-3
3 By Representative Shiver
4 RFD: Judiciary
5 First Read: 27-APR-11

2
3
4
5
6
7
8 SYNOPSIS: Existing law establishes various offenses
9 relating to the unauthorized provision of specified
10 items to persons confined in local and state
11 correctional facilities.

12 This bill would provide, subject to
13 exceptions, that it shall be unlawful for an inmate
14 to possess a cellular telephone, wireless
15 communication device, or computer that allows the
16 input, output, examination, or transfer of computer
17 programs from one computer to another person or for
18 a person to possess with the intent to deliver, or
19 delivers, to an inmate in the custody of the
20 Alabama Department of Corrections a cellular
21 telephone, wireless communication device, or
22 computer that allows the input, output,
23 examination, or transfer of computer programs from
24 one computer to another person.

25 This bill would provide criminal penalties.

26 This bill would provide that the crime of
27 unauthorized possession of a cellular telephone,

1 wireless communication device, or a computer that
2 allows the input, output, examination, or transfer
3 of computer programs from one computer to another
4 person by an inmate should not be construed to
5 repeal other criminal laws.

6 This bill would also provide that if a
7 person visiting an inmate is found to be in
8 possession of any cellular telephone, wireless
9 communication device, or computer that allows the
10 input, output, examination, or transfer of computer
11 programs from one computer to another person when
12 searched or subjected to a metal detector, that
13 cellular telephone or wireless communication device
14 shall be subject to confiscation.

15 This bill would require posted notices
16 regarding the search and confiscation provisions.

17 This bill would allow the Alabama Department
18 of Corrections to enter into an agreement or
19 contract to detect unauthorized inmate
20 communications by cellular telephone or other
21 wireless communication devices.

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

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

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

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT

19
20 Relating to the Alabama Department of Corrections;
21 to provide, subject to exceptions, that it shall be unlawful
22 for an inmate to possess a cellular telephone, wireless
23 communication device, or computer that allows the input,
24 output, examination, or transfer of computer programs from one
25 computer to another person or for a person to possess with the
26 intent to deliver, or delivers, to an inmate in the custody of
27 the Alabama Department of Corrections a cellular telephone,

1 wireless communication device, or computer that allows the
2 input, output, examination, or transfer of computer programs
3 from one computer to another person; to provide criminal
4 penalties; to provide that the crime of unauthorized
5 possession of a cellular telephone, wireless communication
6 device, or a computer that allows the input, output,
7 examination, or transfer of computer programs from one
8 computer to another person by an inmate should not be
9 construed to repeal other criminal laws; to provide that if a
10 person visiting an inmate is found to be in possession of any
11 cellular telephone, wireless communication device, or computer
12 that allows the input, output, examination, or transfer of
13 computer programs from one computer to another person when
14 searched or subjected to a metal detector, that cellular
15 telephone or wireless communication device shall be subject to
16 confiscation; to require posted notices regarding the search
17 and confiscation provisions; to allow the Alabama Department
18 of Corrections to enter into an agreement or contract to
19 detect unauthorized inmate communications by cellular
20 telephone or other wireless communication devices; and in
21 connection therewith would have as its purpose or effect the
22 requirement of a new or increased expenditure of local funds
23 within the meaning of Amendment 621 of the Constitution of
24 Alabama of 1901, now appearing as Section 111.05 of the
25 Official Recompilation of the Constitution of Alabama of 1901,
26 as amended.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. (a) Except as otherwise authorized by
2 law, or when authorized by the person in charge of the prison
3 or other institution subject to this section, or by an officer
4 of the institution empowered to give that authorization, it
5 shall be unlawful for an inmate to possess a cellular
6 telephone, wireless communication device, or computer that
7 allows the input, output, examination, or transfer of computer
8 programs from one computer to another person or for any person
9 to possess with the intent to deliver, or delivers, to an
10 inmate in the custody of the Alabama Department of Corrections
11 a cellular telephone, wireless communication device, or a
12 computer that allows the input, output, examination, or
13 transfer of computer programs from one computer to another
14 person.

15 (b) An inmate in the custody of the Alabama
16 Department of Corrections who by means of a cellular
17 telephone, wireless communication device, or computer
18 communication system that allows the input, output,
19 examination, or transfer of computer programs from one
20 computer to another person any message or information
21 communicates with another person shall provide his or her
22 identity and inmate identification number to the person.

23 (c) A violation of this section shall be a Class A
24 misdemeanor.

25 (d) This section may not be construed to repeal
26 other criminal laws. Whenever conduct proscribed by this
27 section is also proscribed by any other provision of law, the

1 provision which carries the more serious penalty shall be
2 applied.

3 Section 2. (a) If a person visiting an inmate in the
4 custody of the Alabama Department of Corrections, upon being
5 searched or subjected to a metal detector, is found to be in
6 possession of a cellular telephone, wireless communication
7 device, or a computer communication system that allows the
8 input, output, examination, or transfer of computer programs
9 from one computer to another person, that device or computer
10 shall be subject to confiscation.

11 (b) Notice of this provision shall be posted in each
12 area where visitors are searched prior to visitation with an
13 inmate in the custody of the Alabama Department of
14 Corrections.

15 Section 3. The Alabama Department of Corrections may
16 enter into an agreement or contract to detect unauthorized
17 inmate communications by cellular telephone or other wireless
18 communication device.

19 Section 4. Although this bill would have as its
20 purpose or effect the requirement of a new or increased
21 expenditure of local funds, the bill is excluded from further
22 requirements and application under Amendment 621, now
23 appearing as Section 111.05 of the Official Recompilation of
24 the Constitution of Alabama of 1901, as amended, because the
25 bill defines a new crime or amends the definition of an
26 existing crime.

1 Section 5. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.