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3 HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HB232
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8 SYNOPSIS: This bill would relate to physicians,
9 dentists, or other persons licensed or otherwise
10 permitted to distribute or dispense a controlled
11 substance.

12 This bill would provide the violation of
13 unlawful distribution can only be proven through
14 expert testimony of a similarly situated
15 practitioner.

16 This bill would provide for assessment of an
17 additional fine to be disbursed in connection with
18 the prosecution of specific offenses.

19 Amendment 621 of the Constitution of Alabama
20 of 1901, now appearing as Section 111.05 of the
21 Official Recompilation of the Constitution of
22 Alabama of 1901, as amended, prohibits a general
23 law whose purpose or effect would be to require a
24 new or increased expenditure of local funds from
25 becoming effective with regard to a local
26 governmental entity without enactment by a 2/3 vote
27 unless: it comes within one of a number of

1 specified exceptions; it is approved by the
2 affected entity; or the Legislature appropriates
3 funds, or provides a local source of revenue, to
4 the entity for the purpose.

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

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT
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17 Relating to persons licensed to distribute or
18 dispense controlled substances; to amend Sections 20-2-58 and
19 20-2-71, Code of Alabama 1975, to provide expert testimony
20 required for prosecution; to provide for assessment of an
21 additional fine; and in connection therewith would have as its
22 purpose or effect the requirement of a new or increased
23 expenditure of local funds within the meaning of Amendment 621
24 of the Constitution of Alabama of 1901, now appearing as
25 Section 111.05 of the Official Recompilation of the
26 Constitution of Alabama of 1901, as amended.
27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 20-2-58 and 20-2-71, Code of
2 Alabama 1975, are amended to read as follows:

3 "§20-2-58.

4 "(a) Except as otherwise provided in this section or
5 as otherwise provided by law, a pharmacist may dispense
6 directly a controlled substance in Schedule II only pursuant
7 to a written prescription signed by the practitioner. Except
8 as provided in subsections (b) and (c), a prescription for a
9 Schedule II controlled substance may be transmitted by the
10 practitioner or the agent of the practitioner to a pharmacy
11 via facsimile equipment, provided the original written, signed
12 prescription is presented to the pharmacist for review prior
13 to the actual dispensing of the controlled substance.

14 "(b) A prescription written for a Schedule II
15 narcotic substance to be compounded for the direct
16 administration to a patient by parenteral, intravenous,
17 intramuscular, subcutaneous, or intraspinal infusion may be
18 transmitted by the practitioner or the agent of the
19 practitioner to the home infusion pharmacy by facsimile. The
20 facsimile shall serve as the original written prescription.

21 "(c) A prescription written for Schedule II
22 substances for a resident of a long-term care facility may be
23 transmitted by the practitioner or the agent of the
24 practitioner to the dispensing pharmacy by facsimile. The
25 facsimile shall serve as the original written prescription.

26 "(d) Each registered pharmacy shall maintain the
27 inventories and records of controlled substances as follows:

1 "(1) Inventories and records of all controlled
2 substances listed in Schedules I and II shall be maintained
3 separately from all other records of the pharmacy, and
4 prescriptions for the substances shall be maintained in a
5 separate prescription file.

6 "(2) Inventories and records of controlled
7 substances listed in Schedules III, IV, and V shall be
8 maintained either separately from all other records of the
9 pharmacy or in the form that the information required is
10 readily retrievable from ordinary business records of the
11 pharmacy, and prescriptions for the substances shall be
12 maintained either in separate prescription file for controlled
13 substances listed in Schedules III, IV, and V only or in the
14 form that they are readily retrievable from the other
15 prescription records of the pharmacy.

16 "(e) Except when dispensed directly by a
17 practitioner, other than a pharmacy, to an ultimate user, a
18 controlled substance included in Schedule III or IV which is a
19 prescription drug as determined under State Board of Health
20 statute, shall not be dispensed without a written or oral
21 prescription of a practitioner. The prescription shall not be
22 filled or refilled more than six months after the date thereof
23 or be refilled more than five times, unless renewed by the
24 practitioner.

25 "(f) A controlled substance included in ~~Schedule~~
26 Schedules II, III, IV, and V shall ~~not~~ only be distributed or
27 dispensed ~~other than~~ for a legitimate medical purpose by a

1 practitioner acting in the usual course of his or her
2 professional practice.

3 "(g) In an emergency situation, a pharmacist may
4 dispense a Schedule II controlled substance for a resident of
5 a long-term care facility, a patient receiving hospice
6 services, or a patient receiving home health care services
7 pursuant to an emergency oral prescription transmitted by the
8 practitioner to the dispensing pharmacy. The quantity
9 dispensed pursuant to an emergency oral prescription shall be
10 limited to the amount adequate to treat the patient during the
11 emergency period not to exceed 72 hours. The practitioner,
12 within seven days of the emergency oral prescription, shall
13 provide the dispensing pharmacy with a written prescription
14 for the quantity prescribed.

15 "§20-2-71.

16 "(a) It is unlawful for any person:

17 "(1) Who is subject to Article 3 of this chapter to
18 knowingly or intentionally distribute or dispense a controlled
19 substance in violation of Section 20-2-58;

20 "(2) Who is a registrant to manufacture a controlled
21 substance not authorized by his or her registration or to
22 distribute or dispense a controlled substance not authorized
23 by his or her registration to another registrant or other
24 authorized person;

25 "(3) To refuse or fail to make, keep, or furnish any
26 record, notification, order form, statement, invoice, or
27 information required under this chapter; provided, however,

1 that upon the first conviction of a violator under this
2 provision ~~said~~ the violator shall be guilty of a Class A
3 misdemeanor. Subsequent convictions shall subject the violator
4 to the felony penalty provision set forth in subsection (b) of
5 this section.

6 "(4) To refuse an entry into any premises for any
7 inspection authorized by this chapter; or

8 "(5) Knowingly to keep or maintain any store, shop,
9 warehouse, dwelling, building, vehicle, boat, aircraft, or
10 other structure or place which is resorted to by persons using
11 controlled substances in violation of this chapter for the
12 purpose of using these substances or which is used for keeping
13 or selling them in violation of this chapter.

14 "(b) Any person who violates this section is guilty
15 of a Class B felony.

16 "(c) (1) A violation of subdivision (1) of subsection
17 (a) may only be proven by expert testimony from a similarly
18 situated health care practitioner who is licensed by the
19 appropriate regulatory board or agency.

20 "(2) In addition to any other fine or penalty
21 provided by law, the defendant shall pay an additional fine of
22 fifty thousand dollars (\$50,000) for a violation of
23 subdivision (1) of subsection (a). All monies collected
24 pursuant to this subdivision shall be deposited into a
25 dedicated fund of the State Treasury which shall be known as
26 the Office of Prosecution Services Expert Witness Fund.
27 Pursuant to budget and allotment as provided in Sections

1 41-4-80 through 41-4-96 and Sections 41-19-11 through
2 41-19-12, the Comptroller shall disburse funds pursuant to
3 this subdivision. The Executive Committee of the Alabama
4 District Attorneys Association and the Executive Director of
5 the Office of Prosecution Services shall authorize
6 distributions from this fund to be made to district attorneys
7 for prosecution expenses related to expert witness fees and
8 other trial expenses. On a monthly basis, the clerk of the
9 court shall transfer the additional fines collected pursuant
10 to this subdivision to the State Treasury for deposit in the
11 Office of Prosecution Services Expert Witness Fund,
12 established by this section."

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

21 Section 3. This act shall become effective
22 immediately following its passage and approval by the
23 Governor, or its otherwise becoming law.