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3 HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HB305
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8 SYNOPSIS: Existing law prohibits the sale or delivery
9 of drug paraphernalia.

10 This bill would provide enhanced penalties
11 for the sale or delivery of drug paraphernalia
12 within 1,000 feet of a school campus or church.
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14 A BILL
15 TO BE ENTITLED
16 AN ACT
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18 Relating to drug paraphernalia; to amend Section
19 13A-12-260, Code of Alabama 1975; to provide for enhanced
20 penalties for the offense of delivering or selling drug
21 paraphernalia under certain circumstances.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

25 "§13A-12-260.

26 "(a) Definition of "drug paraphernalia". As used in
27 this section, the term "drug paraphernalia" means all

1 equipment, products, and materials of any kind which are used,
2 intended for use, or designed for use, in planting,
3 propagating, cultivating, growing, harvesting, manufacturing,
4 compounding, converting, producing, processing, preparing,
5 testing, analyzing, packaging, repackaging, storing,
6 containing, concealing, injecting, ingesting, inhaling, or
7 otherwise introducing into the human body a controlled
8 substance in violation of the controlled substances laws of
9 this state. It includes but is not limited to:

10 "(1) Kits used, intended for use, or designed for
11 use in planting, propagating, cultivating, growing, or
12 harvesting of any species of plant which is a controlled
13 substance or from which a controlled substance can be derived;

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

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

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

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

26 "(6) Dilutants and adulterants, such as quinine
27 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 cannabinols, 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. Bongs;

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

21 "(1) Statements by an owner or by anyone in control
22 of the object concerning its use;

23 "(2) Prior convictions, if any, of an owner, or of
24 anyone in control of the object, under any state or federal
25 law relating to any controlled substance;

1 "(3) The proximity of the object, in time and space,
2 to a direct violation of this section or to a controlled
3 substance;

4 "(4) The existence of any residue of controlled
5 substances on the object;

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

14 "(6) Instructions, oral or written, provided with
15 the object concerning its use;

16 "(7) Descriptive materials accompanying the object
17 which explain or depict its use;

18 "(8) National and local advertising concerning its
19 use;

20 "(9) The manner in which the object is displayed for
21 sale;

22 "(10) Whether the owner, or anyone in control of the
23 object, is a legitimate supplier of like or related items to
24 the community, such as a licensed distributor or dealer of
25 tobacco products;

1 "(11) Direct or circumstantial evidence of the ratio
2 of sales of the object or objects to the total sales of the
3 business enterprise;

4 "(12) The existence and scope of legitimate uses for
5 the object in the community;

6 "(13) Expert testimony concerning its use.

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

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

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

1 "(e) Delivery or sale.

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

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

25 "(3) In addition to any other penalties, there is
26 imposed a fine of two hundred fifty dollars (\$250) if the
27 unlawful delivery or sale was conducted on the campus or

1 within a 1,000 foot radius of the campus boundaries of any
2 public or private school, college, university, or other
3 educational institution, or church in this state.

4 "(f) Contraband; forfeiture. All drug paraphernalia
5 used in violation of this section shall be contraband and
6 subject to the forfeiture laws of this state and Section
7 20-2-93 as amended, in particular."

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