

1 SB168
2 216297-3
3 By Senators McClendon, Coleman-Madison, Hatcher, Williams,
4 Givhan, Butler and Beasley
5 RFD: Healthcare
6 First Read: 02-FEB-22

1 SB168

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4 ENROLLED, An Act,

5 Relating to controlled substances; to amend Section
6 13A-12-260 of the Code of Alabama 1975, to exempt the
7 distribution or possession of certain items used to test for
8 the presence of fentanyl or any synthetic controlled substance
9 fentanyl analogue.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

13 "§13A-12-260.

14 "(a) ~~Definition of "drug paraphernalia"~~. As used in
15 this section, the term "drug paraphernalia" means all
16 equipment, products, and materials of any kind which are used,
17 intended for use, or designed for use, in planting,
18 propagating, cultivating, growing, harvesting, manufacturing,
19 compounding, converting, producing, processing, preparing,
20 testing, analyzing, packaging, repackaging, storing,
21 containing, concealing, injecting, ingesting, inhaling, or
22 otherwise introducing into the human body a controlled
23 substance in violation of the controlled substances laws of
24 this state. It includes, but is not limited to, all of the
25 following:

1 "(1) Kits used, intended for use, or designed for
2 use in planting, propagating, cultivating, growing, or
3 harvesting of any species of plant which is a controlled
4 substance or from which a controlled substance can be
5 derived~~7.~~

6 "(2) Kits used, intended for use, or designed for
7 use in manufacturing, compounding, converting, producing,
8 processing, or preparing controlled substances~~7.~~

9 "(3) Isomerization devices used, intended for use,
10 or designed for use in increasing the potency of any species
11 of plant which is a controlled substance~~7.~~

12 "(4) Testing equipment used, intended for use, or
13 designed for use in identifying, or in analyzing the strength,
14 effectiveness, or purity of controlled substances~~7.~~

15 "(5) Scales and balances used, intended for use, or
16 designed for use in weighing or measuring controlled
17 substances~~7.~~

18 "(6) Dilutants and adulterants, such as quinine
19 hydrochloride, mannitol, mannite, dextrose~~7.~~ and lactose, used,
20 intended for use, or designed for use in cutting controlled
21 substances~~7.~~

22 "(7) Separation gins and sifters used, intended for
23 use, or designed for use in removing twigs and seeds from, or
24 in otherwise cleaning or refining, ~~marihuana~~ marijuana.

1 "(8) Blenders, bowls, containers, spoons, and mixing
2 devices used, intended for use, or designed for use in
3 compounding controlled substances.

4 "(9) Capsules, balloons, envelopes, and other
5 containers used, intended for use, or designed for use in
6 packaging small quantities of controlled substances.

7 "(10) Containers and other objects used, intended
8 for use, or designed for use in storing or concealing
9 controlled substances.

10 "(11) Hypodermic syringes, needles, and other
11 objects used, intended for use, or designed for use in
12 parenterally injecting controlled substances into the human
13 body.

14 "(12) Objects used, intended for use, or designed
15 for use in ingesting, inhaling, or otherwise introducing
16 ~~marihuana marijuana, tetrahydrocannabinols~~
17 tetrahydrocannabinols, cocaine, hashish, or hashish oil into
18 the human body, ~~such as~~ including, but not limited to:

19 "a. Metal, wooden, acrylic, glass, stone, plastic,
20 or ceramic pipes with or without screens, permanent screens,
21 hashish heads, or punctured metal bowls.

22 "b. Water pipes.

23 "c. Carburetion tubes and devices.

24 "d. Smoking and carburetion masks.

1 "e. Roach clips: Meaning objects used to hold
2 burning material, such as a ~~marihuana~~ marijuana cigarette,
3 that has become too small or too short to be held in the
4 hand7.

5 "f. Miniature cocaine spoons7 and cocaine vials7.

6 "g. Chamber pipes7.

7 "h. Carburetor pipes7.

8 "i. Electric pipes7.

9 "j. Air-driven pipes7.

10 "k. Chillums7.

11 "l. Bong7.

12 "m. Ice pipes or chillers7.

13 "n. Glass tubes which are hollow, cylindrical items
14 made of glass which are smaller than three-quarters of an inch
15 in diameter, shorter than 12 inches in length, and which are
16 not sealed with glass at both ends.

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

22 "(1) Statements by an owner or by anyone in control
23 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.

1 "(10) Whether the owner, or anyone in control of the
2 object, is a legitimate supplier of like or related items to
3 the community, such as a licensed distributor or dealer of
4 tobacco products7.

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

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

10 "(13) Expert testimony concerning its use.

11 "~~(c) (1) Use or possession with intent to use.~~ It
12 shall be unlawful for any person to use, or to possess with
13 intent to use, or to use to inject, ingest, inhale, or
14 otherwise introduce into the human body, drug paraphernalia to
15 plant, propagate, cultivate, grow, harvest, compound, convert,
16 produce, process, prepare, test, analyze, pack, repack, store,
17 contain, or conceal a controlled substance in violation of the
18 controlled substances laws of this state.

19 "(2) Any person who violates this subsection is
20 guilty of a Class A misdemeanor and upon conviction shall be
21 punished as prescribed by law.

22 "(d) (1) It shall be unlawful for any person to use,
23 deliver, or sell, possess with intent to deliver or sell, or
24 manufacture with intent to deliver or sell, or to possess with
25 intent to use, drug paraphernalia to manufacture a controlled

1 substance in violation of the controlled substances laws of
2 this state.

3 "(2) Any person who violates this subsection is
4 guilty of a Class C felony. If a person is in violation of
5 this subsection and is in possession of a firearm at the time
6 of the offense, the person shall be guilty of a Class B
7 felony.

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

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

7 "(f) Notwithstanding subdivision (e) (1), a person
8 may possess, deliver, or sell testing equipment designed to
9 detect the presence of fentanyl or any synthetic controlled
10 substance fentanyl analogue, as described in Sections 20-2-23
11 and 20-2-25.

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

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB168

Senate 10-FEB-22

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris,
Secretary.

House of Representatives
Passed: 09-MAR-22

By: Senator McClendon