

1 HB38
2 114849-1
3 By Representative Newton (D)
4 RFD: Judiciary
5 First Read: 12-JAN-10
6 PFD: 11/05/2009

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8 SYNOPSIS: Under existing law, certain acts between a
9 student and a teacher at the school where the
10 student attends may or may not be a crime depending
11 on the capacity of the student to consent to the
12 act.

13 This bill would make it a crime for a school
14 employee to engage in a sex act, deviant sexual
15 intercourse, or have sexual contact with a student,
16 male or female, under 19 years of age.

17 This bill would provide that the school
18 employee may be placed on paid administrative leave
19 while the charge is adjudicated and would provide
20 for further disciplinary action pursuant to the
21 Teacher Tenure Act, the Teacher Accountability Act,
22 or the Fair Dismissal Act.

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

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

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

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT
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21 Relating to crimes and offenses; to provide for the
22 crimes of a school employee engaging in a sex act, deviant
23 sexual intercourse, or having sexual contact with a student;
24 to provide penalties; and in connection therewith would have
25 as its purpose or effect the requirement of a new or increased
26 expenditure of local funds within the meaning of Amendment 621
27 of the Constitution of Alabama of 1901, now appearing as

1 Section 111.05 of the Official ReCompilation of the
2 Constitution of Alabama of 1901, as amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. (a) A person commits the crime of a
5 school employee engaging in a sex act or deviant sexual
6 intercourse with a student under the age of 19 years if he or
7 she is a school employee and engages in a sex act or deviant
8 sexual intercourse with a student, regardless of whether the
9 student is male or female. Consent is not a defense to a
10 charge under this section.

11 (b) As used in this section, "sex act" means sexual
12 intercourse with any penetration, however slight; emission is
13 not required.

14 (c) As used in this section, "deviant sexual
15 intercourse" means any act of sexual gratification between
16 persons not married to each other involving the sex organs of
17 one person and the mouth or anus of another.

18 (d) The crime of a school employee engaging in a sex
19 act or deviant sexual intercourse with a student is a Class B
20 felony.

21 Section 2. (a) A person commits the crime of a
22 school employee having sexual contact with a student under the
23 age of 19 years if he or she is a school employee and engaging
24 in sexual contact with a student, regardless of whether the
25 student is male or female. Consent is not a defense to a
26 charge under this section.

1 (b) As used in this section, "sexual contact" means
2 any touching of the sexual or other intimate parts of a
3 student, done for the purpose of gratifying the sexual desire
4 of either party. The term includes soliciting or harassing a
5 student to perform a sex act.

6 (c) The crime of a school employee having sexual
7 contact with a student is a Class A misdemeanor.

8 Section 3. A school employee charged with the crime
9 of engaging in a sex act or deviant sexual intercourse with a
10 student or the crime of having sexual contact with a student
11 may be placed on paid administrative leave while the charge is
12 adjudicated. Upon the adjudication of the charge, further
13 disciplinary action may be taken in accordance with the
14 Teacher Tenure Act, Section 16-24-1, et seq., the Teacher
15 Accountability Act, Section 16-24B-1, et seq., or the Fair
16 Dismissal Act, Section 36-26-100, et seq., whichever is
17 applicable.

18 Section 4. For purposes of this act, "school
19 employee" includes a teacher, school administrator, student
20 teacher, safety or resource officer, coach, and other school
21 employee.

22 Section 5. Although this bill would have as its
23 purpose or effect the requirement of a new or increased
24 expenditure of local funds, the bill is excluded from further
25 requirements and application under Amendment 621, now
26 appearing as Section 111.05 of the Official Recompilation of
27 the Constitution of Alabama of 1901, as amended, because the

1 bill defines a new crime or amends the definition of an
2 existing crime.

3 Section 6. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.