

1 HB612
2 168808-1
3 By Representative Todd
4 RFD: Judiciary
5 First Read: 05-MAY-15

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8 SYNOPSIS: Under existing law, one circumstance in
9 which a person commits the crime of sexual
10 misconduct is when he or she engages in deviate
11 sexual intercourse with another person under
12 circumstances not covered by sodomy in the first
13 degree or sodomy in the second degree, and consent
14 is not a defense to prosecution under this
15 circumstance regardless of the age of either party.
16 This provision of the existing sexual misconduct
17 law was declared unconstitutional by the Alabama
18 Court of Civil Appeals in Williams v. Dallas
19 County.

20 This bill would revise the sexual misconduct
21 law to require lack of consent or obtaining consent
22 through the use of fraud or artifice.

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 various sex crimes; to amend Sections
22 13A-6-65 and 13A-6-70, Code of Alabama 1975; to revise the
23 crime of sexual misconduct; to provide for the definition of
24 consent; and in connection therewith would have as its purpose
25 or effect the requirement of a new or increased expenditure of
26 local funds within the meaning of Amendment 621 of the
27 Constitution of Alabama of 1901, now appearing as Section

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

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 13A-6-65 and 13A-6-70, Code of
5 Alabama 1975, are amended to read as follows:

6 "§13A-6-65.

7 "(a) A person commits the crime of sexual misconduct
8 if:

9 "(1) ~~Being a male, he~~ He or she engages in sexual
10 intercourse with ~~a female~~ a person of the opposite sex without
11 ~~her~~ the consent of that person, under circumstances other than
12 those covered by Sections 13A-6-61 and 13A-6-62; or with his
13 or her consent where consent was obtained by the use of any
14 fraud or artifice; or

15 "~~(2) Being a female, she engages in sexual~~
16 ~~intercourse with a male without his consent; or~~

17 "~~(3)~~ (2) He or she engages in deviate sexual
18 intercourse with another person without his or her consent
19 under circumstances other than those covered by Sections
20 13A-6-63 and 13A-6-64. ~~Consent is no defense to a prosecution~~
21 ~~under this subdivision~~ or with his or her consent where
22 consent was obtained by the use of any fraud or artifice.

23 "(b) Sexual misconduct is a Class A misdemeanor.

24 "§13A-6-70.

25 "(a) Whether or not specifically stated, it is an
26 element of every offense defined in this article, with the
27 exception of ~~subdivision (a) (3)~~ subdivisions (1) and (2) of

1 subsection (a) of Section 13A-6-65, that the sexual act was
2 committed without consent of the victim.

3 "(b) Lack of consent results from:

4 "(1) Forcible compulsion; or

5 "(2) Incapacity to consent; or

6 "(3) If the offense charged is sexual abuse, any
7 circumstances, in addition to forcible compulsion or
8 incapacity to consent, in which the victim does not expressly
9 or impliedly acquiesce in the actor's conduct.

10 "(c) A person is deemed incapable of consent if he
11 is:

12 "(1) Less than 16 years old; or

13 "(2) Mentally defective; or

14 "(3) Mentally incapacitated; or

15 "(4) Physically helpless.

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

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