

1 SB391
2 200832-1
3 By Senator McClendon
4 RFD: Healthcare
5 First Read: 08-MAY-19

8 SYNOPSIS: Under existing law, it is unlawful for a
9 person to use or possess to use drug paraphernalia
10 for the purpose of testing or analyzing a
11 controlled substance in violation of the controlled
12 substances laws of this state. A violation is a
13 Class A misdemeanor. It is also unlawful to deliver
14 or sell the items knowing they will be used to
15 violate the controlled substances law. A violation
16 of this provision is a Class A misdemeanor on a
17 first offense or a Class C felony on a subsequent
18 offense. The items are also subject to forfeiture.

19 This bill would amend the definition of drug
20 paraphernalia for the purposes of this law to
21 delete items used or designed to be used for
22 testing or analyzing a controlled substance.

24 A BILL
25 TO BE ENTITLED
26 AN ACT

1 Relating to controlled substances; to amend Section
2 13A-12-260 of the Code of Alabama 1975, prohibiting the use,
3 possession, or sale of drug paraphernalia used for the purpose
4 of a violation of the controlled substances laws of this state
5 and providing criminal penalties; to delete from the law items
6 used for testing or analyzing controlled substances.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

10 "§13A-12-260.

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

23 "(1) Kits used, intended for use, or designed for
24 use in planting, propagating, cultivating, growing, or
25 harvesting of any species of plant which is a controlled
26 substance or from which a controlled substance can be
27 derived;.

1 "(2) Kits used, intended for use, or designed for
2 use in manufacturing, compounding, converting, producing,
3 processing, or preparing controlled substances7.

4 "(3) Isomerization devices used, intended for use,
5 or designed for use in increasing the potency of any species
6 of plant which is a controlled substance7.

7 "~~(4) Testing equipment used, intended for use, or~~
8 ~~designed for use in identifying, or in analyzing the strength,~~
9 ~~effectiveness, or purity of controlled substances;~~

10 "~~(5)~~ (4) Scales and balances used, intended for use,
11 or designed for use in weighing or measuring controlled
12 substances7.

13 "~~(6)~~ (5) Dilutants and adulterants, such as quinine
14 hydrochloride, mannitol, mannite, dextrose and lactose, used,
15 intended for use, or designed for use in cutting controlled
16 substances7.

17 "~~(7)~~ (6) Separation gins and sifters used, intended
18 for use, or designed for use in removing twigs and seeds from,
19 or in otherwise cleaning or refining, ~~marihuana~~ marijuana7.

20 "~~(8)~~ (7) Blenders, bowls, containers, spoons and
21 mixing devices used, intended for use, or designed for use in
22 compounding controlled substances7.

23 "~~(9)~~ (8) Capsules, balloons, envelopes and other
24 containers used, intended for use, or designed for use in
25 packaging small quantities of controlled substances7.

1 "~~(10)~~(9) Containers and other objects used, intended
2 for use, or designed for use in storing or concealing
3 controlled substances~~7~~.

4 "~~(11)~~(10) Hypodermic syringes, needles and other
5 objects used, intended for use, or designed for use in
6 parenterally injecting controlled substances into the human
7 body~~7~~.

8 "~~(12)~~(11) Objects used, intended for use, or
9 designed for use in ingesting, inhaling, or otherwise
10 introducing ~~marihuana~~ marijuana, tetrahydro cannabinols,
11 cocaine, hashish, or hashish oil into the human body, such as:

12 "a. Metal, wooden, acrylic, glass, stone, plastic,
13 or ceramic pipes with or without screens, permanent screens,
14 hashish heads, or punctured metal bowls;

15 "b. Water pipes;

16 "c. Carburetion tubes and devices;

17 "d. Smoking and carburetion masks;

18 "e. Roach clips: Meaning objects used to hold
19 burning material, such as a ~~marihuana~~ marijuana cigarette,
20 that has become too small or too short to be held in the hand;

21 "f. Miniature cocaine spoons, and cocaine vials;

22 "g. Chamber pipes;

23 "h. Carburetor pipes;

24 "i. Electric pipes;

25 "j. Air-driven pipes;

26 "k. Chillums;

27 "l. Bongs;

1 "m. Ice pipes or chillers;

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

6 "(b) Factors in determining whether object is drug
7 paraphernalia. In determining whether an object is drug
8 paraphernalia, a court or other authority shall consider, in
9 addition to all other logically relevant factors, all of the
10 following:

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

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

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

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

21 "(5) Direct or circumstantial evidence of the intent
22 of an owner, or of anyone in control of the object, to deliver
23 it to persons whom he knows intend to use the object to
24 facilitate a violation of the controlled substances laws of
25 this state; the innocence of an owner, or of anyone in control
26 of the object, as to a direct violation of such laws shall not

1 prevent a finding that the object is intended for use, or
2 designed for use as drug paraphernalia7.

3 "(6) Instructions, oral or written, provided with
4 the object concerning its use7.

5 "(7) Descriptive materials accompanying the object
6 which explain or depict its use7.

7 "(8) National and local advertising concerning its
8 use7.

9 "(9) The manner in which the object is displayed for
10 sale7.

11 "(10) Whether the owner, or anyone in control of the
12 object, is a legitimate supplier of like or related items to
13 the community, such as a licensed distributor or dealer of
14 tobacco products7.

15 "(11) Direct or circumstantial evidence of the ratio
16 of sales of the object or objects to the total sales of the
17 business enterprise7.

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

20 "(13) Expert testimony concerning its use.

21 "(c) Use or possession with intent to use. It shall
22 be unlawful for any person to use, or to possess with intent
23 to use, or to use to inject, ingest, inhale or otherwise
24 introduce into the human body, drug paraphernalia to plant,
25 propagate, cultivate, grow, harvest, compound, convert,
26 produce, process, prepare, ~~test, analyze,~~ pack, repack, store,
27 contain or conceal a controlled substance in violation of the

1 controlled substances laws of this state. Any person who
2 violates this subsection is guilty of a Class A misdemeanor
3 and upon conviction shall be punished as prescribed by law.

4 "(d) (1) It shall be unlawful for any person to use,
5 deliver, or sell, possess with intent to deliver or sell, or
6 manufacture with intent to deliver or sell, or to possess with
7 intent to use, drug paraphernalia to manufacture a controlled
8 substance in violation of the controlled substances laws of
9 this state.

10 "(2) Any person who violates this subsection is
11 guilty of a Class C felony. If a person is in violation of
12 this subsection and is in possession of a firearm at the time
13 of the offense, the person shall be guilty of a Class B
14 felony.

15 "(e) Delivery or sale.

16 "(1) It shall be unlawful for any person to deliver
17 or sell, possess with intent to deliver or sell, or
18 manufacture with intent to deliver or sell drug paraphernalia,
19 knowing that it will be used to plant, propagate, cultivate,
20 grow, harvest, compound, convert, produce, process, prepare,
21 ~~test, analyze,~~ pack, repack, store, contain, conceal, inject,
22 ingest, inhale, or otherwise introduce into the human body a
23 controlled substance in violation of the controlled substances
24 laws of this state. Any person who violates this section is
25 guilty of a Class A misdemeanor and upon conviction shall be
26 punished as prescribed by law. A person who is convicted of a
27 subsequent violation of this subsection shall be guilty of a

1 Class C felony and punished as prescribed by law. Any person
2 convicted of violating this subsection who previously has been
3 convicted of violating subdivision (2) of this subsection
4 shall be subject to the same penalties specified for
5 subsequent violations of this subsection.

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

12 "(f) Contraband; forfeiture. All drug paraphernalia
13 used in violation of this section shall be contraband and
14 subject to the forfeiture laws of this state and Section
15 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.