

1 HB76
2 197331-1
3 By Representative England
4 RFD: Health
5 First Read: 05-MAR-19
6 PFD: 03/04/2019

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8 SYNOPSIS: Under existing law, a controlled substance
9 included in Schedule V may only be distributed or
10 dispensed for a medical purpose.

11 This bill would provide that a practitioner
12 or pharmacist may not knowingly prescribe,
13 administer, or dispense a controlled substance
14 enumerated in Schedules I through V except for a
15 legitimate medical purpose in the practitioner's
16 regular practice of his or her profession.

17 Under existing law, it is a Class B felony
18 for a person licensed to distribute or dispense a
19 controlled substance to dispense or distribute a
20 controlled substance in violation of the law.

21 This bill would amend the elements of the
22 crime to provide that a person commits the crime if
23 he or she acts knowingly or intentionally.

24 Amendment 621 of the Constitution of Alabama
25 of 1901, now appearing as Section 111.05 of the
26 Official Recompilation of the Constitution of
27 Alabama of 1901, as amended, prohibits a general

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

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

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18 A BILL
19 TO BE ENTITLED
20 AN ACT
21

22 Relating to persons licensed to distribute or
23 dispense controlled substances; to amend Sections 20-2-58 and
24 20-2-71, Code of Alabama 1975, to provide that a practitioner
25 or pharmacist may not knowingly prescribe, administer, or
26 dispense a controlled substance enumerated in Schedules I
27 through V except for a legitimate medical purpose in the

1 practitioner's regular practice of his or her profession; to
2 provide further for the crime of unlawfully distributing or
3 dispensing a controlled substance; and in connection therewith
4 would have as its purpose or effect the requirement of a new
5 or increased expenditure of local funds within the meaning of
6 Amendment 621 of the Constitution of Alabama of 1901, now
7 appearing as Section 111.05 of the Official Recompilation of
8 the Constitution of Alabama of 1901, as amended.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Sections 20-2-58 and 20-2-71, Code of
11 Alabama 1975, are amended to read as follows:

12 "§20-2-58.

13 "(a) Except as otherwise provided in this section or
14 as otherwise provided by law, a pharmacist may dispense
15 directly a controlled substance in Schedule II only pursuant
16 to a written prescription signed by the practitioner. Except
17 as provided in subsections (b) and (c), a prescription for a
18 Schedule II controlled substance may be transmitted by the
19 practitioner or the agent of the practitioner to a pharmacy
20 via facsimile equipment; provided, the original written,
21 signed prescription is presented to the pharmacist for review
22 prior to the actual dispensing of the controlled substance.

23 "(b) A prescription written for a Schedule II
24 narcotic substance to be compounded for the direct
25 administration to a patient by parenteral, intravenous,
26 intramuscular, subcutaneous, or intraspinal infusion may be
27 transmitted by the practitioner or the agent of the

1 practitioner to the home infusion pharmacy by facsimile. The
2 facsimile shall serve as the original written prescription.

3 "(c) A prescription written for Schedule II
4 substances for a resident of a long-term care facility may be
5 transmitted by the practitioner or the agent of the
6 practitioner to the dispensing pharmacy by facsimile. The
7 facsimile shall serve as the original written prescription.

8 "(d) Each registered pharmacy shall maintain the
9 inventories and records of controlled substances as follows:

10 "(1) Inventories and records of all controlled
11 substances listed in Schedules I and II shall be maintained
12 separately from all other records of the pharmacy, and
13 prescriptions for the substances shall be maintained in a
14 separate prescription file.

15 "(2) Inventories and records of controlled
16 substances listed in Schedules III, IV, and V shall be
17 maintained either separately from all other records of the
18 pharmacy or in the form that the information required is
19 readily retrievable from ordinary business records of the
20 pharmacy, and prescriptions for the substances shall be
21 maintained either in a separate prescription file for
22 controlled substances listed in Schedules III, IV, and V only
23 or in the form that they are readily retrievable from the
24 other prescription records of the pharmacy.

25 "(e) Except when dispensed directly by a
26 practitioner, other than a pharmacy, to an ultimate user, a
27 controlled substance included in Schedule III or IV which is a

1 prescription drug as determined under State Board of Health
2 statute, ~~shall~~ may not be dispensed without a written or oral
3 prescription of a practitioner. The prescription ~~shall~~ may not
4 be filled or refilled more than six months after the date
5 thereof or be refilled more than five times, unless renewed by
6 the practitioner.

7 "(f) ~~A controlled substance included in Schedule V~~
8 ~~shall not be distributed or dispensed other than for a medical~~
9 ~~purpose~~ A practitioner or pharmacist may not knowingly or
10 intentionally prescribe, administer, or dispense a controlled
11 substance enumerated in Schedules I through V except for a
12 legitimate medical purpose in the practitioner's regular
13 practice of his or her profession.

14 "(g) In an emergency situation, a pharmacist may
15 dispense a Schedule II controlled substance for a resident of
16 a long-term care facility, a patient receiving hospice
17 services, or a patient receiving home health care services
18 pursuant to an emergency oral prescription transmitted by the
19 practitioner to the dispensing pharmacy. The quantity
20 dispensed pursuant to an emergency oral prescription shall be
21 limited to the amount adequate to treat the patient during the
22 emergency period, not to exceed 72 hours. The practitioner,
23 within seven days of the emergency oral prescription, shall
24 provide the dispensing pharmacy with a written prescription
25 for the quantity prescribed.

26 "§20-2-71.

27 "(a) It is unlawful for any person:

1 "(1) Who is subject to Article 3 of this chapter to
2 knowingly or intentionally distribute or dispense a controlled
3 substance in violation of Section 20-2-58;

4 "(2) Who is a registrant to manufacture a controlled
5 substance not authorized by his or her registration or to
6 distribute or dispense a controlled substance not authorized
7 by his or her registration to another registrant or other
8 authorized person;

9 "(3) To refuse or fail to make, keep, or furnish any
10 record, notification, order form, statement, invoice, or
11 information required under this chapter; provided, however,
12 that upon the first conviction of a violator under this
13 provision ~~said~~ the violator shall be guilty of a Class A
14 misdemeanor. Subsequent convictions shall subject the violator
15 to the felony penalty provision set forth in subsection (b) of
16 this section.

17 "(4) To refuse an entry into any premises for any
18 inspection authorized by this chapter; or

19 "(5) ~~Knowingly to~~ To knowingly keep or maintain any
20 store, shop, warehouse, dwelling, building, vehicle, boat,
21 aircraft, or other structure or place which is resorted to by
22 persons using controlled substances in violation of this
23 chapter for the purpose of using these substances or which is
24 used for keeping or selling them in violation of this chapter.

25 "(b) Any person who violates this section is guilty
26 of a Class B felony."

1 Section 2. Although this bill would have as its
2 purpose or effect the requirement of a new or increased
3 expenditure of local funds, the bill is excluded from further
4 requirements and application under Amendment 621, now
5 appearing as Section 111.05 of the Official ReCompilation of
6 the Constitution of Alabama of 1901, as amended, because the
7 bill defines a new crime or amends the definition of an
8 existing crime.

9 Section 3. This act shall become effective
10 immediately following its passage and approval by the
11 Governor, or its otherwise becoming law.