

1 HB322  
2 204264-2  
3 By Representative Johnson  
4 RFD: Judiciary  
5 First Read: 25-FEB-20

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8 SYNOPSIS: This bill would prohibit a business  
9 establishment from selling dextromethorphan to a  
10 child under 18 years of age and would provide  
11 criminal fines for violations. The bill would also  
12 prohibit a political subdivision of this state from  
13 adopting or enforcing a law or rule governing the  
14 sale, distribution, or possession of  
15 dextromethorphan.

16 Amendment 621 of the Constitution of Alabama  
17 of 1901, now appearing as Section 111.05 of the  
18 Official Recompilation of the Constitution of  
19 Alabama of 1901, as amended, prohibits a general  
20 law whose purpose or effect would be to require a  
21 new or increased expenditure of local funds from  
22 becoming effective with regard to a local  
23 governmental entity without enactment by a 2/3 vote  
24 unless: it comes within one of a number of  
25 specified exceptions; it is approved by the  
26 affected entity; or the Legislature appropriates

1 funds, or provides a local source of revenue, to  
2 the entity for the purpose.

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

10  
11 A BILL  
12 TO BE ENTITLED  
13 AN ACT  
14

15 To prohibit a business establishment from selling  
16 dextromethorphan to a child under 18 years of age; to provide  
17 criminal penalties; to specify certain exceptions; to prohibit  
18 a political subdivision of this state from adopting or  
19 enforcing a law or rule governing the sale, distribution, or  
20 possession of dextromethorphan; and in connection therewith  
21 would have as its purpose or effect the requirement of a new  
22 or increased expenditure of local funds within the meaning of  
23 Amendment 621 of the Constitution of Alabama of 1901, now  
24 appearing as Section 111.05 of the Official Recompilation of  
25 the Constitution of Alabama of 1901, as amended.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1           Section 1. For purposes of this act, the following  
2 words have the following meanings:

3           (1) DEXTROMETHORPHAN. A finished drug product  
4 containing any quantity of dextromethorphan.

5           (2) FINISHED DRUG PRODUCT. A drug legally marketed  
6 under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §321  
7 et. seq, that is in finished dosage form.

8           (3) SALE. Includes an exchange, barter, or trade.

9           Section 2. (a) A business establishment may not  
10 dispense, distribute, or sell dextromethorphan to a person  
11 under 18 years of age.

12           (b) Before dispensing, distributing, or selling  
13 dextromethorphan over the counter, a business establishment  
14 shall require the person obtaining the drug to display a  
15 driver's license or other form of identification containing  
16 the person's photograph and indicating that the person is 18  
17 years of age or older, unless the person making the sale  
18 reasonably concludes that the person buying the  
19 dextromethorphan is 27 years of age or older.

20           Section 3. (a) A business establishment violating  
21 this act shall be guilty of a criminal violation pursuant to  
22 subsection (d) of Section 13A-5-3, Code of Alabama 1975,  
23 subject to the penalties provided in this section.

24           (b) (1) Upon a first conviction, the business  
25 establishment shall be given a warning.

1           (2) Upon a second conviction within a two-year  
2 period, the business establishment shall be fined one hundred  
3 dollars (\$100).

4           (3) Upon a third conviction within a two-year  
5 period, the business establishment shall be fined two hundred  
6 dollars (\$200).

7           (4) Upon a fourth or subsequent conviction within a  
8 two-year period, the business establishment shall be fined  
9 three hundred dollars (\$300).

10           (c) Prosecution for a violation of this act shall be  
11 commenced by the issuance of a citation by a law enforcement  
12 officer.

13           Section 4. (a) It is a defense in an action brought  
14 under this act that the person to whom the dextromethorphan  
15 was dispensed, distributed, or sold presented to the business  
16 establishment apparently valid proof of identification.

17           (b) A proof of identification satisfies the  
18 requirements of subsection (a) if it contains a physical  
19 description and photograph consistent with the person's  
20 appearance, purports to establish that the person is 18 years  
21 of age or older, and was issued by a governmental agency. The  
22 proof of identification may include a driver's license issued  
23 by this state or another state, a passport, or an  
24 identification card issued by a state or the federal  
25 government.

1 (c) It is a defense in an action brought under this  
2 act that the business establishment made a good faith effort  
3 to comply with this act.

4 Section 5. (a) This act does not apply to the sale  
5 of any product dispensed or delivered by a licensed pharmacist  
6 according to a prescription issued by a practitioner for a  
7 valid medical purpose within the scope of the practitioner's  
8 license.

9 (b) This act does not require a business  
10 establishment to do either of the following:

11 (1) Keep specific records of transactions covered by  
12 this act.

13 (2) Store dextromethorphan in a specific location in  
14 a business establishment or otherwise restrict the  
15 availability of dextromethorphan to customers.

16 Section 6. (a) A political subdivision of this state  
17 may not adopt or enforce an ordinance, order, rule, or policy  
18 that governs the sale, distribution, or possession of  
19 dextromethorphan.

20 (b) An ordinance, order, rule, or policy described  
21 by subsection (a) is void and unenforceable.

22 Section 7. 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 8. This act shall become effective on  
4 January 1, 2021, following its passage and approval by the  
5 Governor, or its otherwise becoming law.