

1 SB300
2 173147-1
3 By Senator Allen
4 RFD: Judiciary
5 First Read: 24-FEB-16

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8 SYNOPSIS: Under existing law, it is unlawful for any
9 person to possess, manufacture, transport, or
10 distribute a destructive device or bacteriological
11 or biological weapon.

12 This bill would define manufacturing for
13 purposes of crimes relating to biological and
14 bacteriological weapons as the mixing or combining
15 of two-part binary products.

16 This bill would create the crime of unlawful
17 manufacture of a destructive device or
18 bacteriological or biological weapon in the second
19 degree for any person, not otherwise authorized by
20 law, to manufacture or possess the precursor
21 substances necessary with the intent to
22 manufacture, as a Class B felony.

23 This bill would create the crime of unlawful
24 manufacture of a destructive device or
25 bacteriological or biological weapon in the first
26 degree for any person guilty of committing the

1 crime in the first degree in conjunction with
2 certain other conditions, as a Class A felony.

3 This bill would also authorize the State
4 Fire Marshal, by rule, to establish qualifications
5 and procedures for issuing a permit to lawfully
6 manufacture a destructive device or bacteriological
7 or biological weapon.

8 Amendment 621 of the Constitution of Alabama
9 of 1901, now appearing as Section 111.05 of the
10 Official Recompilation of the Constitution of
11 Alabama of 1901, as amended, prohibits a general
12 law whose purpose or effect would be to require a
13 new or increased expenditure of local funds from
14 becoming effective with regard to a local
15 governmental entity without enactment by a 2/3 vote
16 unless: it comes within one of a number of
17 specified exceptions; it is approved by the
18 affected entity; or the Legislature appropriates
19 funds, or provides a local source of revenue, to
20 the entity for the purpose.

21 The purpose or effect of this bill would be
22 to require a new or increased expenditure of local
23 funds within the meaning of the amendment. However,
24 the bill does not require approval of a local
25 governmental entity or enactment by a 2/3 vote to
26 become effective because it comes within one of the
27 specified exceptions contained in the amendment.

1
2 A BILL
3 TO BE ENTITLED
4 AN ACT

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6 To amend Section 13A-10-190, Code of Alabama 1975,
7 and add Sections 13A-10-193.1 and 13A-10-193.2 to the Code of
8 Alabama 1975, relating to destructive devices; to provide for
9 the crimes of unlawful manufacture of a destructive device or
10 bacteriological or biological weapon in the second degree as a
11 Class B felony and in the first degree as a Class A felony; to
12 authorize the State Fire Marshal to establish qualifications
13 and procedures for issuing a permit to lawfully manufacture a
14 destructive device or bacteriological or biological weapon;
15 and in connection therewith would have as its purpose or
16 effect the requirement of a new or increased expenditure of
17 local funds within the meaning of Amendment 621 of the
18 Constitution of Alabama of 1901, now appearing as Section
19 111.05 of the Official Recompilation of the Constitution of
20 Alabama of 1901, as amended.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Section 13A-10-190 of the Code of Alabama
23 1975, are amended to read as follows:

24 "§13A-10-190.

25 "As used in Act 2009-718, the following words shall
26 have the following meanings:

1 "(1) BACTERIOLOGICAL WEAPON or BIOLOGICAL WEAPON. A
2 device which is designed in a manner to permit the intentional
3 release onto any person, into the population or environment of
4 microbial, or other biological agents or toxins or viral
5 agents whatever their origin or method of production in a
6 manner not otherwise authorized by law or any device the
7 development, production, or stockpiling of which is prohibited
8 pursuant to the "Convention on the Prohibition of the
9 Development, Production, and Stockpiling of Bacteriological
10 (Biological) and Toxin Weapons and Their Destruction," 26
11 U.S.T. 583, TIAS 8063. The microbial or biological agents or
12 viral agents shall include, but not be limited to, any of the
13 following: Anthrax or any variation thereof, smallpox or any
14 variation thereof.

15 "(2) CONVICTION. An adjudication of guilt of or a
16 plea of guilty or nolo contendere to the commission of an
17 offense against the laws of this state, any other state or
18 territory, the United States, or a foreign nation recognized
19 by the United States. The term shall include the adjudication
20 or plea of a juvenile to the commission of an act which if
21 committed by an adult would constitute a crime under the laws
22 of this state.

23 "(3) DESTRUCTIVE DEVICE. a. An explosive, l
24 incendiary, or over-pressure device or poison gas which has
25 been configured as a bomb; a grenade; a rocket with a
26 propellant charge of more than four ounces; a missile having
27 an explosive or incendiary charge of more than one-quarter

1 ounce; a poison gas; a mine; a Molotov cocktail; or any other
2 device which is substantially similar to these devices.

3 "b. Any type of weapon by whatever name known which
4 will or may be readily converted to expel a projectile by the
5 action of an explosive or other propellant, through a barrel
6 which has a bore diameter of more than one-half inch in
7 diameter. The term shall not include a pistol, rifle, or
8 shotgun suitable for sporting or personal safety purposes or
9 ammunition; a device which, although originally designed for
10 use as a weapon, is redesigned for use as a signaling,
11 pyrotechnic, line throwing, safety, or similar device; or
12 surplus military ordnance sold, loaned, or given by authority
13 of the appropriate official of the United States Department of
14 Defense.

15 "c. A weapon of mass destruction.

16 "d. A bacteriological weapon or biological weapon.

17 "e. A combination of parts either designed or
18 intended for use in converting any device into a destructive
19 device as otherwise defined in this Act 2009-718.

20 "(4) DETONATOR. A device containing a detonating
21 charge that is used to initiate detonation in an explosive,
22 including, but not limited to, electric blasting caps,
23 blasting caps for use with safety fuses, and detonating cord
24 delay connectors.

25 "(5) DIRECTOR. The Director of the Alabama State Law
26 Enforcement Agency.

1 "(6) DISTRIBUTE. The actual, constructive, or
2 attempted transfer from one person to another.

3 "(7) EXPLOSIVE. A chemical compound or other
4 substance or mechanical system intended for the purpose of
5 producing an explosion capable of causing injury to persons or
6 damage to property or containing oxidizing and combustible
7 units or other ingredients in proportions or quantities that
8 ignition, fire, friction, concussion, percussion, or detonator
9 may produce an explosion capable of causing injury to persons
10 or damage to property. The term explosive shall not include
11 common fireworks, model rockets, and model rocket engines
12 designed, sold, and used for the purpose of propelling
13 recoverable aero models, or toy pistol paper caps in which the
14 explosive content does not average more than 0.25 grains of
15 explosive mixture per paper cap for toy pistols, toy cannons,
16 toy canes, toy guns, or other devices using paper caps unless
17 the devices are used as a component of a destructive device.

18 "(8) EXPLOSIVE ORDNANCE DISPOSAL TECHNICIAN or EOD
19 TECHNICIAN. a. A law enforcement officer, fire official,
20 emergency management official, or an employee of this state or
21 its political subdivisions or an authority of the state or a
22 political subdivision who is currently accredited by the
23 Federal Bureau of Investigation's Hazardous Devices School, or
24 members of the Alabama National Guard who are qualified and
25 trained as explosive ordnance disposal technicians under the
26 appropriate laws and regulations when acting in the
27 performance of their official duties.

1 "b. An official or employee of the United States,
2 including, but not limited to, a member of the Armed Forces of
3 the United States, who is qualified as an explosive ordnance
4 disposal technician under the appropriate laws and regulations
5 when acting in the performance of his or her official duties.

6 "(9) FELONY. An offense punishable by imprisonment
7 for a term of one year or more, and includes conviction by a
8 court-martial under the Uniform Code of Military Justice for
9 an offense which would constitute a felony under the laws of
10 the United States. A conviction of an offense under the laws
11 of a foreign nation shall be considered a felony for the
12 purposes of this article if the conduct giving rise to the
13 conviction would have constituted a felony under the laws of
14 this state or of the United States if committed within the
15 jurisdiction of this state or the United States at the time of
16 the conduct.

17 "(10) HOAX DEVICE or REPLICA. A device or article
18 which has the appearance of a destructive device or
19 bacteriological or biological weapon.

20 "(11) INCENDIARY. A flammable or combustible liquid
21 or compound with a flash point of ~~150~~ 100 degrees Fahrenheit
22 or less as determined by Tagliabue or equivalent closed-cup
23 device including, but not limited to, gasoline, kerosene, fuel
24 oil, or a derivative of these substances.

25 "(12) MANUFACTURING. The process of combining two or
26 more components necessary to produce a destructive device,
27 over-pressure device, explosive, detonator, or poison gas.

1 "~~(12)~~(13) OVER-PRESSURE DEVICE. A frangible
2 container filled with an explosive gas or expanding gas which
3 is designed or constructed so as to cause the container to
4 break or fracture in a manner which is capable of causing
5 death, bodily harm, or property damage.

6 "~~(13)~~(14) POISON GAS. A toxic chemical or its
7 precursors that through its chemical action or properties on
8 life processes causes death or permanent injury to human
9 beings. The term poison gas shall not include any of the
10 following:

11 "a. Riot control agents, smoke, and obscuration
12 materials or medical products which are manufactured,
13 possessed, transported, or used in accordance with the laws of
14 the United States and of this state.

15 "b. Tear gas devices designed to be carried on or
16 about the person which contain not more than one-half ounce of
17 the chemical.

18 "c. Pesticides, as provided in subdivision (2) of
19 Section 13A-10-209.

20 "~~(14)~~(15) PROPERTY. Real or personal property of any
21 kind including money, choses in action, and other similar
22 interests in property.

23 "~~(15)~~(16) PUBLIC BUILDING. A structure which is
24 generally open to members of the public with or without the
25 payment of an admission fee or membership dues including, but
26 not limited to, structures owned, operated, or leased by the
27 state, the United States, any of the several states, or a

1 foreign nation or any political subdivision or authority
2 thereof; a religious organization; any medical facility; any
3 college, school, or university; or any corporation,
4 partnership, or association.

5 "~~(16)~~ (17) STATE FIRE MARSHAL. The State Fire Marshal
6 who is appointed by the Commissioner of Insurance pursuant to
7 Section 27-2-10.

8 "~~(17)~~ (18) WEAPONS OF MASS DESTRUCTION. Include any
9 of the following:

10 "a. Any destructive device as defined in this
11 section.

12 "b. Any weapon that is designed or intended to cause
13 death or serious bodily injury through the release,
14 dissemination, or impact of toxic or poisonous chemicals, or
15 their precursors.

16 "c. Any weapon involving a disease organism.

17 "d. Any weapon that is designed to release radiation
18 or radioactivity at a level dangerous to human life.

19 "e. Any device, weapon, or vehicle designed to cause
20 mass casualties."

21 Section 2. Sections 13A-10-193.1 and 13A-10-193.2
22 are added to the Code of Alabama 1975, to read as follows:

23 §13A-10-193.1

24 (a) A person, who is not otherwise authorized by
25 state or federal law or a permit issued to him or her by the
26 State Fire Marshal, commits the crime of unlawful manufacture
27 of a destructive device or bacteriological or biological

1 weapon in the second degree if he or she does any of the
2 following:

3 (1) Manufactures a destructive device or
4 bacteriological or biological weapon.

5 (2) Possesses precursor substances as determined in
6 Section 13A-10-191, in any amount with the intent to
7 unlawfully manufacture a destructive device or bacteriological
8 or biological weapon.

9 (3) Combines two or more components with the intent
10 to assemble, construct, or otherwise cause to be formed, a
11 destructive device, incendiary device, over-pressure device,
12 detonator, poison gas, or bacteriological or biological weapon
13 as described in Section 13A-10-190.

14 (4) Manufactures an explosive with intent to produce
15 a destructive device, incendiary device, over-pressure device,
16 detonator, poison gas, or bacteriological or biological weapon
17 as described in 13A-10-190.

18 (b) The fact that a destructive device,
19 over-pressure device, explosive, detonator, poison gas, or
20 bacteriological or biological weapon does not function as
21 designed or intended, is not a defense to the crime of
22 unlawful manufacture of a destructive device or
23 bacteriological or biological weapon in the second degree.

24 (c) Unlawful manufacture of a destructive device or
25 bacteriological or biological weapon in the second degree is a
26 Class B felony.

27 §13A-10-193.

1 (a) A person commits the crime of unlawful
2 manufacture of a destructive device or bacteriological or
3 biological weapon in the first degree if he or she violates
4 Section 13A-10-193.1 and two or more of the following
5 conditions occur in conjunction with that violation:

6 (1) Use of a booby trap or manufacture of a booby
7 trap.

8 (2) Illegal possession, transportation, or disposal
9 of hazardous or dangerous materials or while transporting or
10 causing to be transported materials in furtherance of a
11 clandestine laboratory operation, there was created a
12 substantial risk to human health or safety or a danger to the
13 environment.

14 (3) A clandestine laboratory operation was to take
15 place, or did take place, within 500 feet of a residence,
16 place of business, church, or school.

17 (4) A clandestine laboratory operation actually
18 produced any amount of a specified destructive device or
19 bacteriological or biological weapon.

20 (5) A person under the age of 17 was present during
21 the manufacturing process.

22 (b) Unlawful manufacture of a destructive device or
23 bacteriological or biological weapon in the first degree is a
24 Class A felony

25 Section 3. (a) No person may lawfully manufacture a
26 destructive device or bacteriological or biological weapon
27 without first obtaining a permit from the office of the State

1 Fire Marshal. The office of the State Fire Marshal shall adopt
2 rules as necessary to implement this section including, but
3 not limited to, rules for all of the following:

4 (1) The form for making application for a permit.

5 (2) The qualifications necessary for obtaining a
6 permit.

7 (3) Fees for making application, issuance, renewal,
8 reinstatement of a lapsed permit, and other fees deemed
9 necessary by the Fire Marshal relating to a permit.

10 (c) The office shall have 30 days to investigate and
11 review an application, and either issue or deny a permit. A
12 denial shall state the reasons why the permit was not issued
13 and what corrective action, if any, may be taken.

14 (b) A permit shall expire one year following the
15 date of its issuance or renewal and shall become invalid,
16 unless renewed by payment of the applicable fee.

17 Section 4. Although this bill would have as its
18 purpose or effect the requirement of a new or increased
19 expenditure of local funds, the bill is excluded from further
20 requirements and application under Amendment 621 because the
21 bill defines a new crime or amends the definition of an
22 existing crime.

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