

1 HB344
2 127536-1
3 By Representative McCutcheon
4 RFD: Judiciary
5 First Read: 24-MAR-11

SYNOPSIS: This bill would revise the quantity thresholds for marijuana criminal violations to distinguish between low-level drug users and career criminals by changing penalties for marijuana possession in the first and second degrees and creating the crimes of possession of marijuana in the third and fourth degrees.

This bill would revise the quantity threshold of Schedule I controlled substance criminal violations to distinguish between individual drug users and drug traffickers.

This bill would also restructure criminal drug offense penalties for Schedule II through Schedule V controlled substances based on recommended therapeutic dosages as established by the State Board of Health, which would render the Schedules current based on the lawful allowable dosages as drugs are improved or new drugs become available.

1 This bill would authorize the State Board of
2 Health to establish monthly therapeutic dosages for
3 Schedules II-V drugs.

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

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

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

1
2 To amend Sections 13A-12-211, 13A-12-212,
3 13A-12-213, 13A-12-214, 13A-12-231, and 20-2-20, Code of
4 Alabama 1975, to revise the quantity thresholds for marijuana
5 criminal violations to distinguish between low-level drug
6 users and career criminals; to revise the quantity thresholds
7 of Schedule I controlled substance criminal violations to
8 distinguish between individual drug users and professional
9 drug traffickers; to restructure criminal drug offense
10 penalties for Schedules II through V controlled substances
11 based on recommended therapeutic dosages as established by the
12 State Board of Health; to create new criminal penalties
13 related to distribution and possession of certain controlled
14 substances; to authorize the State Board of Health to
15 establish monthly therapeutic dosages for Schedules II-V
16 drugs; to add Sections 13A-12-214.1 and 13A-12-214.2 to the
17 Code of Alabama 1975, to restructure the current criminal
18 penalties for the possession of marijuana; to add criminal
19 penalties for the possession of marijuana; and in connection
20 therewith would have as its purpose or effect the requirement
21 of a new or increased expenditure of local funds within the
22 meaning of Amendment 621 of the Constitution of Alabama of
23 1901, now appearing as Section 111.05 of the Official
24 Recompilation of the Constitution of Alabama of 1901, as
25 amended.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 13A-12-211, 13A-12-212,
2 13A-12-213, 13A-12-214, 13A-12-231, and 20-2-20, Code of
3 Alabama 1975, are amended to read as follows:

4 "§13A-12-211.

5 "(a) A person commits the crime of unlawful
6 distribution of controlled substances if, except as otherwise
7 authorized, he or she sells, furnishes, gives away, delivers,
8 or distributes a controlled substance enumerated in ~~Schedules~~
9 Schedule I through V.

10 "(b) Unlawful distribution of controlled substances,
11 unless otherwise provided, is a Class B felony.

12 "(c) A person, except as otherwise authorized, who
13 sells, furnishes, gives away, delivers, or distributes a
14 controlled substance enumerated in Schedules II through V, as
15 provided in Section 20-2-25, 20-2-27, 20-2-29, or 20-2-31,
16 where the offense classification is based on the specific
17 Schedule II through V enumeration and the number of tablets,
18 capsules, or pills constituting the monthly therapeutic dosage
19 or the milligrams as established by the State Board of Health,
20 to establish the lawful amount of the controlled substance for
21 possession, including whether the quantity is above or below
22 the monthly therapeutic dosage established by the State Board
23 of Health, commits the crime of unlawful distribution of
24 controlled substance. If the distribution is:

25 "(1) A Schedule II drug and:

26 "a. Above the monthly therapeutic dosage, the person
27 shall be guilty of a Class B felony.

1 "b. Below the monthly therapeutic dosage, the person
2 shall be guilty of a Class C felony.

3 "(2) A Schedule III drug and:

4 "a. Above the monthly therapeutic dosage, the person
5 shall be guilty of a Class C felony.

6 "b. Below the monthly therapeutic dosage, the person
7 shall be guilty of a Class D felony.

8 "(3) A Schedule IV or V drug and:

9 "a. Above the monthly therapeutic dosage, the person
10 shall be guilty of a Class D felony.

11 b. Below the monthly therapeutic dosage, the person
12 shall be guilty of a Class A misdemeanor.

13 "(d) Any person who knowingly sells, manufactures,
14 delivers, or brings into this state, or who is knowingly in
15 actual or constructive possession of cocaine, cocaine-base, or
16 any mixture containing cocaine or methamphetamine, as
17 described in Section 20-2-25(1) or Section 20-2-27, is guilty
18 of a felony, which shall be known as "unlawful distribution of
19 controlled substance." If the quantity involved is:

20 "(1) 1.5 grams or more, but less than 28 grams, the
21 person shall be guilty of the unlawful distribution of
22 controlled substance in the first degree, a Class B felony.

23 "(2) Less than 1.5 grams, the person shall be guilty
24 of unlawful distribution of controlled substance in the second
25 degree, a Class C felony.

26 "(e) Any person who knowingly sells, manufactures,
27 delivers, or brings into this state, or who is knowingly in

1 actual or constructive possession of any morphine, opium, or
2 any salt, isomer, or salt of an isomer thereof, including
3 heroin, phencyclidine, or lysergic acid, as described in
4 Section 20-2-23(2) or Section 20-2-25(1)a., or of any mixture
5 containing these substances, is guilty of a felony, which
6 felony shall be known as "unlawful distribution of controlled
7 substance." If the quantity involved is:

8 "(1) 1.5 grams or more, but less than four grams,
9 the person shall be guilty of unlawful distribution of
10 controlled substance in the first degree, a Class B felony.

11 "(2) Less than 1.5 grams, the person shall be guilty
12 of unlawful distribution of controlled substance in the second
13 degree, a Class C felony.

14 "§13A-12-212.

15 "(a) A person commits the crime of unlawful
16 possession of controlled substance if:

17 "(1) Except as otherwise authorized, he or she
18 possesses a controlled substance enumerated in ~~Schedules~~
19 ~~Schedule~~ I ~~through~~ V.

20 "(2) He or she obtains by fraud, deceit,
21 misrepresentation or subterfuge or by the alteration of a
22 prescription or written order or by the concealment of a
23 material fact or by the use of a false name or giving a false
24 address, a controlled substance enumerated in ~~Schedules~~
25 ~~Schedule~~ I ~~through~~ V.

26 "(b) Unlawful possession of a controlled substance,
27 unless otherwise provided, is a Class C felony.

1 "(c) A person, except as otherwise authorized, who
2 possesses a controlled substance enumerated in Schedules II
3 through V, pursuant to Section 20-2-25, 20-2-27, 20-2-29, or
4 20-2-31, commits the crime of "unlawful possession of
5 controlled substance" when in the unlawful actual or
6 constructive possession of drugs enumerated in Schedules II
7 through V, or in violation of the lawful monthly therapeutic
8 dosage or the milligrams for the scheduled drugs as
9 established by the State Board of Health. The therapeutic
10 dosage established for lawful possession is the lawful amount
11 of the controlled substance for authorized possession, which
12 shall be the benchmark to determine whether the quantity in
13 possession is above or below the monthly therapeutic dosage
14 established by the State Board of Health. If the unlawful drug
15 possessed, actually or constructively, is:

16 "(1) A Schedule II drug and:

17 "a. Above the monthly therapeutic dosage, the person
18 shall be guilty of a Class C felony.

19 "b. Below the monthly therapeutic dosage, the person
20 shall be guilty of a Class D felony.

21 "(2) A Schedule III drug and:

22 "a. Above the monthly therapeutic dosage, the person
23 shall be guilty of a Class D felony.

24 "b. Below the monthly therapeutic dosage, the person
25 shall be guilty of a Class A misdemeanor.

26 "(3) A Schedule IV or V drug and:

1 "a. Above the monthly therapeutic dosage, the person
2 shall be guilty of a Class A misdemeanor.

3 "b. Below the monthly therapeutic dosage, the person
4 shall be guilty of a Class B misdemeanor.

5 "(d) Any person who has the unlawful actual or
6 constructive possession or receipt of any morphine, opium, or
7 any salt, isomer, or salt of an isomer thereof, including
8 heroin, phencyclidine, or lysergic acid, as described in
9 Section 20-2-23(2), 20-2-23(3), or 20-2-25(1)a., or any
10 mixture containing any of these substances, is guilty of a
11 felony, which felony shall be known as "unlawful possession of
12 controlled substance." If the quantity involved is:

13 "(1) Three grams or more, but less than four grams,
14 the person shall be guilty of unlawful possession of
15 controlled substance in the first degree, a Class B felony.

16 "(2) One gram or more, but less than three grams,
17 the person shall be guilty of unlawful possession of
18 controlled substance in the second degree, a Class C felony.

19 "(3) Less than one gram, the person shall be guilty
20 of unlawful possession of controlled substance in the third
21 degree, a Class D felony.

22 "(e) Any person who has unlawful or actual
23 constructive possession of cocaine, cocaine-base, or any
24 mixture containing cocaine or methamphetamine, as described in
25 Section 20-2-25(1) or Section 20-2-27, or any mixture
26 containing these substances, is guilty of a felony, which

1 felony shall be known as "unlawful possession of controlled
2 substance." If the quantity involved is:

3 "(1) 14 grams or more, but less than 28 grams, the
4 person is, except as otherwise authorized, guilty of unlawful
5 possession of controlled substance in the first degree, a
6 Class B felony.

7 "(2) 1.5 grams or more but less than 14 grams, the
8 person is, except as otherwise authorized, guilty of unlawful
9 possession of controlled substance in the second degree, a
10 Class C felony.

11 "(3) Less than 1.5 grams, the person is guilty of
12 unlawful possession of controlled substance in the third
13 degree, a Class D felony.

14 "§13A-12-213.

15 "(a) A person commits the crime of unlawful
16 possession of ~~marihuana~~ marijuana in the first degree if,
17 except as otherwise authorized:

18 ~~"(1) He the person possesses marihuana two or more~~
19 ~~pounds, but less than 10 pounds of marijuana. for other than~~
20 ~~personal use; or~~

21 ~~"(2) He possesses marihuana for his personal use~~
22 ~~only after having been previously convicted of unlawful~~
23 ~~possession of marihuana in the second degree or unlawful~~
24 ~~possession of marihuana for his personal use only.~~

25 "(b) Unlawful possession of ~~marihuana~~ marijuana in
26 the first degree is a Class ~~C~~ B felony.

27 "§13A-12-214.

1 "(a) A person commits the crime of unlawful
2 possession of ~~marihuana~~ marijuana in the second degree if,
3 except as otherwise authorized, he or she possesses ~~marihuana~~
4 10 or more ounces, but less than two pounds of marijuana ~~for~~
5 ~~his personal use only.~~

6 "(b) Unlawful possession of ~~marihuana~~ marijuana in
7 the second degree is a Class ~~A misdemeanor~~ C felony.

8 "§13A-12-231.

9 "Except as authorized in Chapter 2, Title 20:

10 "(1) Any person who knowingly sells, manufactures,
11 delivers, or brings into this state, or who is knowingly in
12 actual or constructive possession of, in excess of ~~one kilo or~~
13 ~~2.2~~ 10 pounds of any part of the plant of the genus Cannabis,
14 whether growing or not, the seeds thereof, the resin extracted
15 from any part of the plant, and every compound, manufacture,
16 salt, derivative, mixture, or preparation of the plant, its
17 seeds, or resin including the completely defoliated mature
18 stalks of the plant, fiber produced from the stalks, oil, or
19 cake, or the completely sterilized samples of seeds of the
20 plant which are incapable of germination is guilty of a Class
21 A felony, which felony shall be known as "trafficking in
22 cannabis." Nothing in this subdivision shall apply to samples
23 of tetrahydrocannabinols including, but not limited to, all
24 synthetic or naturally produced samples of
25 tetrahydrocannabinols which contain more than 15 percent by
26 weight of tetrahydrocannabinols and which do not contain plant

1 material exhibiting the external morphological features of the
2 plant cannabis. If the quantity of cannabis involved:

3 "a. Is in excess of ~~one kilo or 2.2~~ 10 pounds, but
4 less than 100 pounds, the person shall be sentenced to a
5 mandatory minimum term of imprisonment of three calendar years
6 and to pay a fine of twenty-five thousand dollars (\$25,000).

7 "b. Is 100 pounds or more, but less than 500 pounds,
8 the person shall be sentenced to a mandatory minimum term of
9 imprisonment of five calendar years and to pay a fine of fifty
10 thousand dollars (\$50,000).

11 "c. Is 500 pounds or more, but less than 1,000
12 pounds, the person shall be sentenced to a mandatory minimum
13 term of imprisonment of 15 calendar years and to pay a fine of
14 two hundred thousand dollars (\$200,000).

15 "d. Is 1,000 pounds or more, the person shall be
16 sentenced to a mandatory term of imprisonment of life without
17 parole.

18 "(2) Any person who knowingly sells, manufactures,
19 delivers, or brings into this state, or who is knowingly in
20 actual or constructive possession of, 28 grams or more of
21 cocaine or of any mixture containing cocaine, described in
22 Section 20-2-25(1), is guilty of a felony, which felony shall
23 be known as "trafficking in cocaine." If the quantity
24 involved:

25 "a. Is 28 grams or more, but less than 500 grams,
26 the person shall be sentenced to a mandatory minimum term of

1 imprisonment of three calendar years and to pay a fine of
2 fifty thousand dollars (\$50,000).

3 "b. Is 500 grams or more, but less than one kilo,
4 the person shall be sentenced to a mandatory minimum term of
5 imprisonment of five calendar years and to pay a fine of one
6 hundred thousand dollars (\$100,000).

7 "c. Is one kilo, but less than 10 kilos, then the
8 person shall be sentenced to a mandatory minimum term of
9 imprisonment of 15 calendar years and to pay a fine of two
10 hundred fifty thousand dollars (\$250,000).

11 "d. Is 10 kilos or more, the person shall be
12 sentenced to a mandatory term of imprisonment of life without
13 parole.

14 "(3) Any person who knowingly sells, manufactures,
15 delivers, or brings into this state, or who is knowingly in
16 actual or constructive possession of, four grams or more of
17 any morphine, opium, or any salt, isomer, or salt of an isomer
18 thereof, including heroin, as described in Section 20-2-23(2)
19 or Section 20-2-25(1)a., or four grams or more of any mixture
20 containing any such substance, is guilty of a felony, which
21 felony shall be known as "trafficking in illegal drugs." If
22 the quantity involved:

23 "a. Is four grams or more, but less than 14 grams,
24 the person shall be sentenced to a mandatory minimum term of
25 imprisonment of three calendar years and to pay a fine of
26 fifty thousand dollars (\$50,000).

1 "b. Is 14 grams or more, but less than 28 grams, the
2 person shall be sentenced to a mandatory minimum term of
3 imprisonment of 10 calendar years and to pay a fine of one
4 hundred thousand dollars (\$100,000).

5 "c. Is 28 grams or more, but less than 56 grams, the
6 person shall be sentenced to a mandatory minimum term of
7 imprisonment of 25 calendar years and to pay a fine of five
8 hundred thousand dollars (\$500,000).

9 "d. Is 56 grams or more, the person shall be
10 sentenced to a mandatory term of imprisonment of life without
11 parole.

12 " (4) Any person who knowingly sells, manufactures,
13 delivers, or brings into this state, or who is knowingly in
14 actual or constructive possession of 1,000 or more pills or
15 capsules of methaqualone, as described in Section 20-2-1, et
16 seq., is guilty of a felony, which felony shall be known as
17 "trafficking in illegal drugs." If the quantity involved:

18 "a. Is 1,000 pills or capsules, but less than 5,000
19 pills or capsules, the person shall be sentenced to a
20 mandatory minimum term of imprisonment of three calendar years
21 and pay a fine of fifty thousand dollars (\$50,000).

22 "b. Is 5,000 capsules or more, but less than 25,000
23 capsules, that person shall be imprisoned to a mandatory
24 minimum term of imprisonment of 10 calendar years and pay a
25 fine of one hundred thousand dollars (\$100,000).

26 "c. Is 25,000 pills or more, but less than 100,000
27 pills or capsules, the person shall be sentenced to a

1 mandatory minimum term of imprisonment of 25 calendar years
2 and pay a fine of five hundred thousand dollars (\$500,000).

3 "d. Is 100,000 capsules or more, the person shall be
4 sentenced to a mandatory term of imprisonment of life without
5 parole.

6 "(5) Any person who knowingly sells, manufactures,
7 delivers or brings into this state, or who is knowingly in
8 actual or constructive possession of 500 or more pills or
9 capsules of hydromorphone as is described in Section 20-2-1,
10 et seq., is guilty of a felony which shall be known as
11 "trafficking in illegal drugs." If the quantity involved:

12 "a. Is 500 pills or capsules or more but less than
13 1,000 pills or capsules, the person shall be sentenced to a
14 mandatory term of imprisonment of three calendar years and to
15 pay a fine of fifty thousand dollars (\$50,000).

16 "b. Is 1,000 pills or capsules or more, but less
17 than 4,000 pills or capsules, the person shall be sentenced to
18 a mandatory term of imprisonment of 10 calendar years and to
19 pay a fine of one hundred thousand dollars (\$100,000).

20 "c. Is 4,000 pills or capsules or more but less than
21 10,000 pills or capsules, the person shall be sentenced to a
22 mandatory term of imprisonment of 25 calendar years and to pay
23 a fine of one hundred thousand dollars (\$100,000).

24 "d. Is more than 10,000 pills or capsules, the
25 person shall be sentenced to a mandatory term of life in
26 prison without parole.

1 "(6) Any person who knowingly sells, manufactures,
2 delivers, or brings into this state, or who is knowingly in
3 actual or constructive possession of, 28 grams or more of
4 3,4-methylenedioxy amphetamine, or of any mixture containing
5 3,4-methylenedioxy amphetamine, is guilty of a felony, which
6 felony shall be known as "trafficking in illegal drugs." If
7 the quantity involved:

8 "a. Is 28 grams or more, but less than 500 grams,
9 the person shall be sentenced to a mandatory minimum term of
10 imprisonment of three calendar years and to pay a fine of
11 fifty thousand dollars (\$50,000).

12 "b. Is 500 grams or more, but less than one kilo,
13 the person shall be sentenced to a mandatory minimum term of
14 imprisonment of five calendar years and to pay a fine of one
15 hundred thousand dollars (\$100,000).

16 "c. Is one kilo, but less than 10 kilos, then the
17 person shall be sentenced to a mandatory minimum term of
18 imprisonment of 15 calendar years and to pay a fine of two
19 hundred fifty thousand dollars (\$250,000).

20 "d. Is 10 kilos or more, the person shall be
21 sentenced to a mandatory term of imprisonment of life without
22 parole.

23 "(7) Any person who knowingly sells, manufactures,
24 delivers, or brings into this state, or who is knowingly in
25 actual or constructive possession of, 28 grams or more of
26 5-methoxy-3, 4-methylenedioxy amphetamine, or of any mixture
27 containing 5-methoxy-3, 4-methylenedioxy amphetamine is guilty

1 of a felony, which felony shall be known as "trafficking in
2 illegal drugs" if the quantity involved:

3 "a. Is 28 grams or more, but less than 500 grams,
4 the person shall be sentenced to a mandatory minimum term of
5 imprisonment of three calendar years and to pay a fine of
6 fifty thousand dollars (\$50,000).

7 "b. Is 500 grams or more, but less than one kilo,
8 the person shall be sentenced to a mandatory minimum term of
9 imprisonment of five calendar years and to pay a fine of one
10 hundred thousand dollars (\$100,000).

11 "c. Is one kilo, but less than 10 kilos, then the
12 person shall be sentenced to a mandatory minimum term of
13 imprisonment of 15 calendar years and to pay a fine of two
14 hundred fifty thousand dollars (\$250,000).

15 "d. Is 10 kilos or more, the person shall be
16 sentenced to a mandatory term of imprisonment of life without
17 parole.

18 "(8) Any person who knowingly sells, manufactures,
19 delivers, or brings into this state, or who is knowingly in
20 actual or constructive possession of, four grams or more of
21 phencyclidine, or any mixture containing phencyclidine, is
22 guilty of a felony, which felony shall be known as
23 "trafficking in illegal drugs." If the quantity involved:

24 "a. Is four grams or more, but less than 14 grams,
25 the person shall be sentenced to a mandatory minimum term of
26 imprisonment of three calendar years and to pay a fine of
27 fifty thousand dollars (\$50,000).

1 "b. Is 14 grams or more, but less than 28 grams, the
2 person shall be sentenced to a mandatory minimum term of
3 imprisonment of five calendar years and to pay a fine of one
4 hundred thousand dollars (\$100,000).

5 "c. Is 28 grams or more, but less than 56 grams,
6 then the person shall be sentenced to a mandatory minimum term
7 of imprisonment of 15 calendar years and to pay a fine of two
8 hundred fifty thousand dollars (\$250,000).

9 "d. Is 56 grams or more, the person shall be
10 sentenced to a mandatory term of imprisonment of life without
11 parole.

12 " (9) Any person who knowingly sells, manufactures,
13 delivers, or brings into this state, or who is knowingly in
14 actual or constructive possession of, four grams or more of
15 lysergic acid diethylamide, of four grams or more of any
16 mixture containing lysergic acid diethylamide, is guilty of a
17 felony, which felony shall be known as "trafficking in illegal
18 drugs." If the quantity involved:

19 "a. Is four grams or more, but less than 14 grams,
20 the person shall be sentenced to a mandatory minimum term of
21 imprisonment of three calendar years and to pay a fine of
22 fifty thousand dollars (\$50,000).

23 "b. Is 14 grams or more, but less than 28 grams, the
24 person shall be sentenced to a mandatory minimum term of
25 imprisonment of 10 calendar years and to pay a fine of one
26 hundred thousand dollars (\$100,000).

1 "c. Is 28 grams or more, but less than 56 grams, the
2 person shall be sentenced to a mandatory minimum term of
3 imprisonment of 25 calendar years and to pay a fine of five
4 hundred thousand dollars (\$500,000).

5 "d. Is 56 grams or more, the person shall be
6 sentenced to a mandatory term of imprisonment of life without
7 parole.

8 "(10) Any person who knowingly sells, manufactures,
9 delivers or brings into this state, or who is knowingly in
10 actual or constructive possession of, 28 grams or more of
11 amphetamine or any mixture containing amphetamine, its salt,
12 optical isomer, or salt of its optical isomer thereof, is
13 guilty of a felony, which felony shall be known as
14 "trafficking in amphetamine." If the quantity involved:

15 "a. Is 28 grams or more but less than 500 grams, the
16 person shall be sentenced to a mandatory minimum term of
17 imprisonment of three calendar years and to pay a fine of
18 fifty thousand dollars (\$50,000).

19 "b. Is 500 grams or more, but less than one kilo,
20 the person shall be sentenced to a mandatory minimum term of
21 imprisonment of five calendar years and to pay a fine of one
22 hundred thousand dollars (\$100,000).

23 "c. Is one kilo but less than 10 kilos, then the
24 person shall be sentenced to a mandatory minimum term of
25 imprisonment of 15 calendar years and to pay a fine of two
26 hundred fifty thousand dollars (\$250,000).

1 "d. Is 10 kilos or more, the person shall be
2 sentenced to a mandatory term of imprisonment of life without
3 parole.

4 "(11) Any person who knowingly sells, manufactures,
5 delivers, or brings into this state, or who is knowingly in
6 actual or constructive possession of, 28 grams or more of
7 methamphetamine or any mixture containing methamphetamine, its
8 salts, optical isomers, or salt of its optical isomers
9 thereof, is guilty of a felony, which felony shall be known as
10 "trafficking in methamphetamine." If the quantity involved:

11 "a. Is 28 grams or more but less than 500 grams, the
12 person shall be sentenced to a mandatory minimum term of
13 imprisonment of three calendar years and to pay a fine of
14 fifty thousand dollars (\$50,000).

15 "b. Is 500 grams or more, but less than one kilo,
16 the person shall be sentenced to a mandatory minimum term of
17 imprisonment of five calendar years and to pay a fine of one
18 hundred thousand dollars (\$100,000).

19 "c. Is one kilo but less than 10 kilos, then the
20 person shall be sentenced to a mandatory minimum term of
21 imprisonment of 15 calendar years and to pay a fine of two
22 hundred fifty thousand dollars (\$250,000).

23 "d. Is 10 kilos or more, the person shall be
24 sentenced to a mandatory term of imprisonment of life without
25 parole.

26 "(12) The felonies of "trafficking in cannabis,"
27 "trafficking in cocaine," "trafficking in illegal drugs,"

1 "trafficking in amphetamine," and "trafficking in
2 methamphetamine" as defined in subdivisions (1) through (11),
3 above, shall be treated as Class A felonies for purposes of
4 Title 13A, including sentencing under Section 13A-5-9.
5 Provided, however, that the sentence of imprisonment for a
6 defendant with one or more prior felony convictions who
7 violates subdivisions (1) through (11) of this section shall
8 be the sentence provided therein, or the sentence provided
9 under Section 13A-5-9, whichever is greater. Provided further,
10 that the fine for a defendant with one or more prior felony
11 convictions who violates subdivisions (1) through (11) of this
12 section shall be the fine provided therein, or the fine
13 provided under Section 13A-5-9, whichever is greater.

14 (13) If the totality of the evidence shows that the
15 person is a user and is not engaged in an enterprise involving
16 large quantities of cannabis, cocaine, illegal drugs, or
17 amphetamine, the judge, in his or her discretion, may reduce
18 the trafficking charge to unlawful possession of marijuana in
19 the first degree and sentence the person accordingly.

20 "~~(13)~~ (14) Notwithstanding any provision of law to
21 the contrary, any person who has possession of a firearm
22 during the commission of any act proscribed by this section
23 shall be punished by a term of imprisonment of five calendar
24 years which shall be in addition to, and not in lieu of, the
25 punishment otherwise provided, and a fine of twenty-five
26 thousand dollars (\$25,000); the court shall not suspend the

1 five-year additional sentence of the person or give the person
2 a probationary sentence.

3 "§20-2-20.

4 "(a) The State Board of Health, unless otherwise
5 specified, shall administer this chapter and may add
6 substances to or delete or reschedule all substances
7 enumerated in the schedules in Sections 20-2-23, 20-2-25,
8 20-2-27, 20-2-29, or 20-2-31 pursuant to the procedures of the
9 State Board of Health. and shall have the authority, also
10 pursuant to the administrative procedures applicable to the
11 board for scheduling purposes, to establish the monthly
12 therapeutic dosage for the controlled substances enumerated in
13 Schedules II through V, as found in Section 20-2-25, 20-2-27,
14 20-2-29, or 20-2-31, which shall serve as the basis for
15 classifying offenses applicable to the lawful and unlawful
16 use, distribution, or possession of the scheduled substances.

17 In making a determination regarding a substance, the State
18 Board of Health shall consider all of the following:

19 "(1) The actual or relative potential for abuse.

20 "(2) The scientific evidence of its pharmacological
21 effect, if known.

22 "(3) The state of current scientific knowledge
23 regarding the substance.

24 "(4) The history and current pattern of abuse.

25 "(5) The scope, duration, and significance of abuse.

26 "(6) The risk to the public health.

1 "(7) The potential of the substance to produce
2 psychic or physiological dependence liability.

3 "(8) Whether the substance is an immediate precursor
4 of a substance already controlled under this chapter.

5 "(b) After considering the factors enumerated in
6 subsection (a), the State Board of Health shall make findings
7 with respect thereto and issue a rule controlling the
8 substance if it finds the substance has a potential for abuse.

9 "(c) If any substance is designated, rescheduled, or
10 deleted as a controlled substance under federal law and notice
11 thereof is given to the State Board of Health, the State Board
12 of Health shall similarly control the substance under this
13 chapter after the expiration of 30 days from publication in
14 the federal register of a final order designating a substance
15 as a controlled substance or rescheduling or deleting a
16 substance, unless within that 30-day period, the State Board
17 of Health objects to inclusion, rescheduling, or deletion. In
18 that case, the State Board of Health shall publish the reasons
19 for objection and afford all interested parties an opportunity
20 to be heard. At the conclusion of the hearing, the State Board
21 of Health shall publish its decision, which shall be final
22 unless altered by statute. Upon publication of objection to
23 inclusion, rescheduling, or deletion under this chapter by the
24 State Board of Health, control under this chapter is stayed
25 until the State Board of Health publishes its decision.

1 "(d) Authority to control under this section does
2 not extend to distilled spirits, wine, malt, beverages, or
3 tobacco.

4 "(e) The State Board of Health shall exclude any
5 nonnarcotic substance from a schedule if such substance, under
6 the federal Food, Drug and Cosmetic Act, the federal
7 Comprehensive Drug Abuse Prevention and Control Act of 1970,
8 and the law of this state may be lawfully sold over the
9 counter without a prescription."

10 Section 2. Sections 13A-12-214.1 and 13A-12-214.2
11 are added to the Code of Alabama 1975, to read as follows:

12 §13A-12-214.1

13 (a) A person commits the crime of unlawful
14 possession of marijuana in the third degree if, except as
15 otherwise authorized, the person possesses three ounces or
16 more, but less than 10 ounces of marijuana for his or her
17 personal use only.

18 (b) Unlawful possession of marijuana in the third
19 degree is a Class D felony.

20 §13A-12-214.2

21 (a) A person commits the crime of unlawful
22 possession of marijuana in the fourth degree if, except as
23 otherwise authorized, the person possesses not more than three
24 ounces of marijuana for his or her personal use only.

25 (b) Unlawful possession of marijuana in the fourth
26 degree is a Class A misdemeanor. If a person has three
27 previous convictions for unlawful possession of marijuana in

1 the fourth degree, each a Class A misdemeanor, the sentence
2 shall be enhanced to a Class D felony.

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

11 Section 4. This act shall become effective on the
12 first day of the third month following its passage and
13 approval by the Governor, or its otherwise becoming law.