

1 HB478
2 138398-1
3 By Representatives Jones and Colston
4 RFD: Judiciary
5 First Read: 06-MAR-12

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8 SYNOPSIS: Under existing law, a person may be charged
9 with driving under the influence when there is a
10 percent of alcohol in the blood or the person is
11 under the influence of alcohol, or a person may be
12 charged under separate subdivisions of the law if
13 the person is under the influence of a controlled
14 substance, both alcohol and a controlled substance,
15 or any substance which renders the person incapable
16 of safe driving. Under the existing law, the term
17 "under the influence" is not defined.

18 This bill would define "under the influence"
19 for the purpose of the offense of driving under the
20 influence to mean not having the normal use of
21 mental and physical facilities by reason of the
22 introduction into the body of alcohol, a controlled
23 substance, a drug, or any other substance, or a
24 combination of two or more of those substances. The
25 bill would consolidate the charges of driving under
26 the influence to specify that a person may be
27 charged with driving under the influence if the

1 person is under the influence of any substance or
2 substances which render the person incapable of
3 safe driving.

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.

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25 A BILL
26 TO BE ENTITLED
27 AN ACT

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To amend Section 32-5A-191 of the Code of Alabama 1975, as amended by Acts 2011-621 and 2011-613 of the 2011 Regular Session, relating to the offense of driving under the influence; to further define the offense and to define the term "under the influence" for the purpose of unsafe driving; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 32-5A-191 of the Code of Alabama 1975, is amended to read as follows:

"§32-5A-191.

"(a) A person shall not drive or be in actual physical control of any vehicle while:

"(1) There is 0.08 percent or more by weight of alcohol in his or her blood; or

~~"(2) Under the influence of alcohol;~~

~~"(3) Under the influence of a controlled substance to a degree which renders him or her incapable of safely driving;~~

~~"(4) Under the combined influence of alcohol and a controlled substance to a degree which renders him or her incapable of safely driving; or~~

1 "~~(5)~~ (2)a. Under the influence of any substance
2 ~~which impairs the mental or physical faculties of such person~~
3 ~~or substances~~ to a degree which renders him or her incapable
4 of safely driving.

5 "b. For the purposes of this section, the term
6 "under the influence" means not having the normal use of
7 mental or physical faculties by reason of the introduction
8 into the body of alcohol, a controlled substance, a drug, or
9 any other substance, or a combination of two or more of those
10 substances.

11 "(b) A person who is under the age of 21 years shall
12 not drive or be in actual physical control of any vehicle if
13 there is 0.02 percent or more by weight of alcohol in his or
14 her blood. The Department of Public Safety shall suspend or
15 revoke the driver's license of any person, including, but not
16 limited to, a juvenile, child, or youthful offender, convicted
17 or adjudicated of or subjected to a finding of delinquency
18 based on this subsection. Notwithstanding the foregoing, upon
19 the first violation of this subsection by a person whose blood
20 alcohol level is between 0.02 and 0.08, the person's driver's
21 license or driving privilege shall be suspended for a period
22 of 30 days in lieu of any penalties provided in subsection (e)
23 of this section, and there shall be no disclosure, other than
24 to courts, law enforcement agencies, and the person's
25 employer, by any entity or person of any information,
26 documents, or records relating to the person's arrest,

1 conviction, or adjudication of or finding of delinquency based
2 on this subsection.

3 "All persons, except as otherwise provided in this
4 subsection for a first offense, including, but not limited to,
5 a juvenile, child, or youthful offender, convicted or
6 adjudicated of or subjected to a finding of delinquency based
7 on this subsection shall be fined pursuant to this section,
8 notwithstanding any other law to the contrary, and the person
9 shall also be required to attend and complete a DUI or
10 substance abuse court referral program in accordance with
11 subsection (i).

12 "(c) (1) A school bus or day care driver shall not
13 drive or be in actual physical control of any vehicle while in
14 performance of his or her duties if there is greater than 0.02
15 percent by weight of alcohol in his or her blood. A person
16 convicted pursuant to this subsection shall be subject to the
17 penalties provided by this section, except that on the first
18 conviction the Director of Public Safety shall suspend the
19 driving privilege or driver's license for a period of one
20 year.

21 "(2) A person shall not drive or be in actual
22 physical control of a commercial motor vehicle, as defined in
23 49 CFR Part 390.5 of the Federal Motor Carrier Safety
24 Regulations as adopted pursuant to Section 32-9A-2, if there
25 is 0.04 percent or greater by weight of alcohol in his or her
26 blood. Notwithstanding the other provisions of this section,
27 the commercial driver's license or commercial driving

1 privilege of a person convicted of violating this subdivision
2 shall be suspended for the period provided in accordance with
3 49 CFR Part 383.51 or 49 CFR Part 391.15, as applicable, and
4 the person's regular driver's license or privilege to drive a
5 regular motor vehicle shall be governed by the remainder of
6 this section if the person is guilty of a violation of another
7 provision of this section.

8 "(d) The fact that any person charged with violating
9 this section is or has been legally entitled to use alcohol or
10 a controlled substance shall not constitute a defense against
11 any charge of violating this section.

12 "(e) Upon first conviction, a person violating this
13 section shall be punished by imprisonment in the county or
14 municipal jail for not more than one year, or by fine of not
15 less than six hundred dollars (\$600) nor more than two
16 thousand one hundred dollars (\$2,100), or by both a fine and
17 imprisonment. In addition, on a first conviction, the Director
18 of Public Safety shall suspend the driving privilege or
19 driver's license of the person convicted for a period of 90
20 days.

21 "(f) On a second conviction within a five-year
22 period, a person convicted of violating this section shall be
23 punished by a fine of not less than one thousand one hundred
24 dollars (\$1,100) nor more than five thousand one hundred
25 dollars (\$5,100) and by imprisonment, which may include hard
26 labor, in the county or municipal jail for not more than one
27 year. The sentence shall include a mandatory sentence, which

1 is not subject to suspension or probation, of imprisonment in
2 the county or municipal jail for not less than five days or
3 community service for not less than 30 days. In addition the
4 Director of Public Safety shall revoke the driving privileges
5 or driver's license of the person convicted for a period of
6 one year.

7 "(g) On a third conviction, a person convicted of
8 violating this section shall be punished by a fine of not less
9 than two thousand one hundred dollars (\$2,100) nor more than
10 ten thousand one hundred dollars (\$10,100) and by
11 imprisonment, which may include hard labor, in the county or
12 municipal jail for not less than 60 days nor more than one
13 year, to include a minimum of 60 days which shall be served in
14 the county or municipal jail and cannot be probated or
15 suspended. In addition, the Director of Public Safety shall
16 revoke the driving privilege or driver's license of the person
17 convicted for a period of three years.

18 "(h) On a fourth or subsequent conviction, a person
19 convicted of violating this section shall be guilty of a Class
20 C felony and punished by a fine of not less than four thousand
21 one hundred dollars (\$4,100) nor more than ten thousand one
22 hundred dollars (\$10,100) and by imprisonment of not less than
23 one year and one day nor more than 10 years. Any term of
24 imprisonment may include hard labor for the county or state,
25 and where imprisonment does not exceed three years,
26 confinement may be in the county jail. Where imprisonment does
27 not exceed one year and one day, confinement shall be in the

1 county jail. The minimum sentence shall include a term of
2 imprisonment for at least one year and one day, provided,
3 however, that there shall be a minimum mandatory sentence of
4 10 days which shall be served in the county jail. The
5 remainder of the sentence may be suspended or probated, but
6 only if as a condition of probation the defendant enrolls and
7 successfully completes a state certified chemical dependency
8 program recommended by the court referral officer and approved
9 by the sentencing court. Where probation is granted, the
10 sentencing court may, in its discretion, and where monitoring
11 equipment is available, place the defendant on house arrest
12 under electronic surveillance during the probationary term. In
13 addition to the other penalties authorized, the Director of
14 Public Safety shall revoke the driving privilege or driver's
15 license of the person convicted for a period of five years.

16 "The Alabama habitual felony offender law shall not
17 apply to a conviction of a felony pursuant to this subsection,
18 and a conviction of a felony pursuant to this subsection shall
19 not be a felony conviction for purposes of the enhancement of
20 punishment pursuant to Alabama's habitual felony offender law.

21 "(i) When any person convicted of violating this
22 section is found to have had at least 0.15 percent or more by
23 weight of alcohol in his or her blood while operating or being
24 in actual physical control of a vehicle, he or she shall be
25 sentenced to at least double the minimum punishment that the
26 person would have received if he or she had had less than 0.15
27 percent by weight of alcohol in his or her blood. If the

1 adjudicated offense is a misdemeanor, the minimum punishment
2 shall be imprisonment for one year, all of which may be
3 suspended except as otherwise provided for in Section
4 32-5A-191(f) and Section 32-5A-191 (g). In addition, the
5 Director of Public Safety shall revoke the driving privileges
6 or driver's license of the person convicted for a period of
7 not less than one year.

8 "(j) When any person over the age of 21 years is
9 convicted of violating this section and it is found that a
10 child under the age of 14 years was present in the vehicle at
11 the time of the offense, the person shall be sentenced to at
12 least double the minimum punishment that the person would have
13 received if the child had not been present in the motor
14 vehicle.

15 "(k) In addition to the penalties provided herein,
16 any person convicted of violating this section shall be
17 referred to the court referral officer for evaluation and
18 referral to appropriate community resources. The defendant
19 shall, at a minimum, be required to complete a DUI or
20 substance abuse court referral program approved by the
21 Administrative Office of Courts and operated in accordance
22 with provisions of the Mandatory Treatment Act of 1990,
23 Sections 12-23-1 to 12-23-19, inclusive. The Department of
24 Public Safety shall not reissue a driver's license to a person
25 convicted under this section without receiving proof that the
26 defendant has successfully completed the required program.

1 "(l) Neither reckless driving nor any other traffic
2 infraction is a lesser included offense under a charge of
3 driving under the influence of alcohol or of a controlled
4 substance.

5 "(m) Except for fines collected for violations of
6 this section charged pursuant to a municipal ordinance, fines
7 collected for violations of this section shall be deposited to
8 the State General Fund; however, beginning October 1, 1995, of
9 any amount collected over two hundred fifty dollars (\$250) for
10 a first conviction, over five hundred dollars (\$500) for a
11 second conviction within five years, over one thousand dollars
12 (\$1,000) for a third conviction within five years, and over
13 two thousand dollars (\$2,000) for a fourth or subsequent
14 conviction within five years, the first one hundred dollars
15 (\$100) of that additional amount shall be deposited to the
16 Alabama Chemical Testing Training and Equipment Trust Fund,
17 after three percent of the one hundred dollars (\$100) is
18 deducted for administrative costs, and beginning October 1,
19 1997, and thereafter, the second one hundred dollars (\$100) of
20 that additional amount shall be deposited in the Impaired
21 Drivers Trust Fund after deducting five percent of the one
22 hundred dollars (\$100) for administrative costs and the
23 remainder of the funds shall be deposited to the State General
24 Fund. Fines collected for violations of this section charged
25 pursuant to a municipal ordinance where the total fine is paid
26 at one time shall be deposited as follows: The first three
27 hundred fifty dollars (\$350) collected for a first conviction,

1 the first six hundred dollars (\$600) collected for a second
2 conviction within five years, the first one thousand one
3 hundred dollars (\$1,100) collected for a third conviction, and
4 the first two thousand one hundred dollars (\$2,100) collected
5 for a fourth or subsequent conviction shall be deposited to
6 the State Treasury with the first one hundred dollars (\$100)
7 collected for each conviction credited to the Alabama Chemical
8 Testing Training and Equipment Trust Fund and the second one
9 hundred dollars (\$100) to the Impaired Drivers Trust Fund
10 after deducting five percent of the one hundred dollars (\$100)
11 for administrative costs and depositing this amount in the
12 general fund of the municipality, and the balance credited to
13 the State General Fund. Any amounts collected over these
14 amounts shall be deposited as otherwise provided by law. Fines
15 collected for violations of this section charged pursuant to a
16 municipal ordinance, where the fine is paid on a partial or
17 installment basis, shall be deposited as follows: The first
18 two hundred dollars (\$200) of the fine collected for any
19 conviction shall be deposited to the State Treasury with the
20 first one hundred dollars (\$100) collected for any conviction
21 credited to the Alabama Chemical Testing Training and
22 Equipment Trust Fund and the second one hundred dollars (\$100)
23 for any conviction credited to the Impaired Drivers Trust Fund
24 after deducting five percent of the one hundred dollars (\$100)
25 for administrative costs and depositing this amount in the
26 general fund of the municipality. The second three hundred
27 dollars (\$300) of the fine collected for a first conviction,

1 the second eight hundred dollars (\$800) collected for a second
2 conviction, the second one thousand eight hundred dollars
3 (\$1,800) collected for a third conviction, and the second
4 three thousand eight hundred dollars (\$3,800) collected for a
5 fourth conviction shall be divided with 50 percent of the
6 funds collected to be deposited to the State Treasury to be
7 credited to the State General Fund and 50 percent deposited as
8 otherwise provided by law for municipal ordinance violations.
9 Any amounts collected over these amounts shall be deposited as
10 otherwise provided by law for municipal ordinance violations.
11 Notwithstanding any provision of law to the contrary, 90
12 percent of any fine assessed and collected for any DUI offense
13 charged by municipal ordinance violation in district or
14 circuit court shall be computed only on the amount assessed
15 over the minimum fine authorized, and upon collection shall be
16 distributed to the municipal general fund with the remaining
17 10 percent distributed to the State General Fund.

18 "(n) A person who has been arrested for violating
19 this section shall not be released from jail under bond or
20 otherwise, until there is less than the same percent by weight
21 of alcohol in his or her blood as specified in subsection
22 (a) (1) or, in the case of a person who is under the age of 21
23 years, subsection (b) hereof.

24 "(o) Upon verification that a defendant arrested
25 pursuant to this section is currently on probation from
26 another court of this state as a result of a conviction for
27 any criminal offense, the prosecutor shall provide written or

1 oral notification of the defendant's subsequent arrest and
2 pending prosecution to the court in which the prior conviction
3 occurred.

4 "(p) When any person over the age of 21 years is
5 convicted pursuant to this section and a child under the age
6 of 14 years was present in the vehicle at the time of the
7 offense, the defendant shall be sentenced to double the
8 minimum punishment that the person would have received if the
9 child had not been present in the motor vehicle.

10 "(q) A prior conviction within a five-year period
11 for driving under the influence of alcohol or drugs from this
12 state, a municipality within this state, or another state or
13 territory or a municipality of another state or territory
14 shall be considered by a court for imposing a sentence
15 pursuant to this section.

16 "(r) Any person convicted of driving under the
17 influence of alcohol, or a controlled substance, or both, or
18 any substance which impairs the mental or physical faculties
19 in violation of this section, a municipal ordinance adopting
20 this section, or a similar law from another state or territory
21 or a municipality of another state or territory more than once
22 in a five-year period shall have his or her motor vehicle
23 registration for all vehicles owned by the repeat offender
24 suspended by the Alabama Department of Revenue for the
25 duration of the offender's driver's license suspension period,
26 unless such action would impose an undue hardship to any
27 individual, not including the repeat offender, who is

1 completely dependent on the motor vehicle for the necessities
2 of life, including any family member of the repeat offender
3 and any co-owner of the vehicle."

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

12 Section 3. This act shall become effective on the
13 first day of the third month following its passage and
14 approval by the Governor, or its otherwise becoming law.