

1 HB357  
2 156942-1  
3 By Representatives Jones and Colston  
4 RFD: Judiciary  
5 First Read: 23-JAN-14

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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.

24  
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, 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 ~~which~~  
2 ~~impairs the mental or physical faculties of such person or~~  
3 ~~substances~~ to a degree which renders him or her incapable of  
4 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 (k).

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 383.5 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 disqualified for the period provided in accordance  
3 with 49 CFR Part 383.51, as applicable, and the person's  
4 regular driver's license or privilege to drive a regular motor  
5 vehicle shall be governed by the remainder of this section if  
6 the person is guilty of a violation of another provision of  
7 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. If, on a first conviction, ~~any person refusing to~~  
21 ~~provide a blood alcohol concentration or~~ if a child under the  
22 age of 14 years was present in the vehicle at the time of the  
23 offense or if someone else besides the offender was injured at  
24 the time of the offense, the Director of the Department of  
25 Public Safety shall suspend the driving privilege or driver's  
26 license of the person convicted for a period of 90 days and  
27 the person shall be required to have an ignition interlock

1 device installed and operating on the designated motor vehicle  
2 driven by the offender for a period of two years from the date  
3 of issuance of a driver's license indicating that the person's  
4 driving privileges are subject to the condition of the  
5 installation and use of a certified ignition interlock device  
6 on a motor vehicle.

7 "(f) On a second conviction within a five-year  
8 period, a person convicted of violating this section shall be  
9 punished by a fine of not less than one thousand one hundred  
10 dollars (\$1,100) nor more than five thousand one hundred  
11 dollars (\$5,100) and by imprisonment, which may include hard  
12 labor in the county or municipal jail for not more than one  
13 year. The sentence shall include a mandatory sentence, which  
14 is not subject to suspension or probation, of imprisonment in  
15 the county or municipal jail for not less than five days or  
16 community service for not less than 30 days. In addition the  
17 Director of Public Safety shall revoke the driving privileges  
18 or driver's license of the person convicted for a period of  
19 one year and the offender shall be required to have an  
20 ignition interlock device installed and operating on the  
21 designated motor vehicle driven by the offender for a period  
22 of two years from the date of issuance of a driver's license  
23 indicating that the person's driving privileges are subject to  
24 the condition of the installation and use of a certified  
25 ignition interlock device on a motor vehicle.

26 "(g) On a third conviction, a person convicted of  
27 violating this section shall be punished by a fine of not less



1 than two thousand one hundred dollars (\$2,100) nor more than  
2 ten thousand one hundred dollars (\$10,100) and by  
3 imprisonment, which may include hard labor, in the county or  
4 municipal jail for not less than 60 days nor more than one  
5 year, to include a minimum of 60 days which shall be served in  
6 the county or municipal jail and cannot be probated or  
7 suspended. In addition, the Director of Public Safety shall  
8 revoke the driving privilege or driver's license of the person  
9 convicted for a period of three years and the offender shall  
10 be required to have an ignition interlock device installed and  
11 operating on the designated motor vehicle driven by the  
12 offender for a period of three years from the date of issuance  
13 of a driver's license indicating that the person's driving  
14 privileges are subject to the condition of the installation  
15 and use of a certified ignition interlock device on a motor  
16 vehicle.

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

1 at least one year and one day, provided, however, that there  
2 shall be a minimum mandatory sentence of 10 days which shall  
3 be served in the county jail. The remainder of the sentence  
4 may be suspended or probated, but only if as a condition of  
5 probation the defendant enrolls and successfully completes a  
6 state certified chemical dependency program recommended by the  
7 court referral officer and approved by the sentencing court.  
8 Where probation is granted, the sentencing court may, in its  
9 discretion, and where monitoring equipment is available, place  
10 the defendant on house arrest under electronic surveillance  
11 during the probationary term. In addition to the other  
12 penalties authorized, the Director of Public Safety shall  
13 revoke the driving privilege or driver's license of the person  
14 convicted for a period of five years and the offender shall be  
15 required to have an ignition interlock device installed and  
16 operating on the designated motor vehicle driven by the  
17 offender for a period of five years from the date of issuance  
18 of a driver's license indicating that the person's driving  
19 privileges are subject to the condition of the installation  
20 and use of a certified ignition interlock device on a motor  
21 vehicle.

22 "The Alabama habitual felony offender law shall not  
23 apply to a conviction of a felony pursuant to this subsection,  
24 and a conviction of a felony pursuant to this subsection shall  
25 not be a felony conviction for purposes of the enhancement of  
26 punishment pursuant to Alabama's habitual felony offender law.

1           "(i) When any person convicted of violating this  
2 section is found to have had at least 0.15 percent or more by  
3 weight of alcohol in his or her blood while operating or being  
4 in actual physical control of a vehicle, he or she shall be  
5 sentenced to at least double the minimum punishment that the  
6 person would have received if he or she had had less than 0.15  
7 percent by weight of alcohol in his or her blood. If the  
8 adjudicated offense is a misdemeanor, the minimum punishment  
9 shall be imprisonment for one year, all of which may be  
10 suspended except as otherwise provided for in Section  
11 32-5A-191(f) and Section 32-5A-191 (g). In addition, the  
12 Director of Public Safety shall revoke the driving privileges  
13 or driver's license of the person convicted for a period of  
14 not less than one year.

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

22           "(k) In addition to the penalties provided herein,  
23 any person convicted of violating this section shall be  
24 referred to the court referral officer for evaluation and  
25 referral to appropriate community resources. The defendant  
26 shall, at a minimum, be required to complete a DUI or  
27 substance abuse court referral program approved by the

1 Administrative Office of Courts and operated in accordance  
2 with provisions of the Mandatory Treatment Act of 1990,  
3 Sections 12-23-1 to 12-23-19, inclusive. The Department of  
4 Public Safety shall not reissue a driver's license to a person  
5 convicted under this section without receiving proof that the  
6 defendant has successfully completed the required program.

7 "(l) Neither reckless driving nor any other traffic  
8 infraction is a lesser included offense under a charge of  
9 driving under the influence of alcohol or of a controlled  
10 substance.

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

1 hundred dollars (\$100) for administrative costs and the  
2 remainder of the funds shall be deposited to the State General  
3 Fund. Fines collected for violations of this section charged  
4 pursuant to a municipal ordinance where the total fine is paid  
5 at one time shall be deposited as follows: The first three  
6 hundred fifty dollars (\$350) collected for a first conviction,  
7 the first six hundred dollars (\$600) collected for a second  
8 conviction within five years, the first one thousand one  
9 hundred dollars (\$1,100) collected for a third conviction, and  
10 the first two thousand one hundred dollars (\$2,100) collected  
11 for a fourth or subsequent conviction shall be deposited to  
12 the State Treasury with the first one hundred dollars (\$100)  
13 collected for each conviction credited to the Alabama Chemical  
14 Testing Training and Equipment Trust Fund and the second one  
15 hundred dollars (\$100) to the Impaired Drivers Trust Fund  
16 after deducting five percent of the one hundred dollars (\$100)  
17 for administrative costs and depositing this amount in the  
18 general fund of the municipality, and the balance credited to  
19 the State General Fund. Any amounts collected over these  
20 amounts shall be deposited as otherwise provided by law. Fines  
21 collected for violations of this section charged pursuant to a  
22 municipal ordinance, where the fine is paid on a partial or  
23 installment basis, shall be deposited as follows: The first  
24 two hundred dollars (\$200) of the fine collected for any  
25 conviction shall be deposited to the State Treasury with the  
26 first one hundred dollars (\$100) collected for any conviction  
27 credited to the Alabama Chemical Testing Training and

1 Equipment Trust Fund and the second one hundred dollars (\$100)  
2 for any conviction credited to the Impaired Drivers Trust Fund  
3 after deducting five percent of the one hundred dollars (\$100)  
4 for administrative costs and depositing this amount in the  
5 general fund of the municipality. The second three hundred  
6 dollars (\$300) of the fine collected for a first conviction,  
7 the second eight hundred dollars (\$800) collected for a second  
8 conviction, the second one thousand eight hundred dollars  
9 (\$1,800) collected for a third conviction, and the second  
10 three thousand eight hundred dollars (\$3,800) collected for a  
11 fourth conviction shall be divided with 50 percent of the  
12 funds collected to be deposited to the State Treasury to be  
13 credited to the State General Fund and 50 percent deposited as  
14 otherwise provided by law for municipal ordinance violations.  
15 Any amounts collected over these amounts shall be deposited as  
16 otherwise provided by law for municipal ordinance violations.  
17 Notwithstanding any provision of law to the contrary, 90  
18 percent of any fine assessed and collected for any DUI offense  
19 charged by municipal ordinance violation in district or  
20 circuit court shall be computed only on the amount assessed  
21 over the minimum fine authorized, and upon collection shall be  
22 distributed to the municipal general fund with the remaining  
23 10 percent distributed to the State General Fund.

24 "(n) A person who has been arrested for violating  
25 this section shall not be released from jail under bond or  
26 otherwise, until there is less than the same percent by weight  
27 of alcohol in his or her blood as specified in subsection

1 (a) (1) or, in the case of a person who is under the age of 21  
2 years, subsection (b) hereof.

3 "(o) Upon verification that a defendant arrested  
4 pursuant to this section is currently on probation from  
5 another court of this state as a result of a conviction for  
6 any criminal offense, the prosecutor shall provide written or  
7 oral notification of the defendant's subsequent arrest and  
8 pending prosecution to the court in which the prior conviction  
9 occurred.

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

16 "(q) A prior conviction within a five-year period  
17 for driving under the influence of alcohol or drugs from this  
18 state, a municipality within this state, or another state or  
19 territory or a municipality of another state or territory  
20 shall be considered by a court for imposing a sentence  
21 pursuant to this section.

22 "(r) Any person convicted of driving under the  
23 influence of alcohol, or a controlled substance, or both, or  
24 any substance which impairs the mental or physical faculties  
25 in violation of this section, a municipal ordinance adopting  
26 this section, or a similar law from another state or territory  
27 or a municipality of another state or territory more than once

1 in a five-year period shall have his or her motor vehicle  
2 registration for all vehicles owned by the repeat offender  
3 suspended by the Alabama Department of Revenue for the  
4 duration of the offender's driver's license suspension period,  
5 unless such action would impose an undue hardship to any  
6 individual, not including the repeat offender, who is  
7 completely dependent on the motor vehicle for the necessities  
8 of life, including any family member of the repeat offender  
9 and any co-owner of the vehicle or, in the case of a repeat  
10 offender, if the repeat offender has a functioning ignition  
11 interlock device installed on the designated vehicle for the  
12 duration of the offender's driver's license suspension period.

13 "(s) Any person ordered by the court to have an  
14 ignition interlock device installed on a designated vehicle  
15 shall pay to the court, during the first four months his or  
16 her license is suspended, seventy-five dollars (\$75) per  
17 month, which shall be divided as follows:

18 "(1) Forty percent to the Alabama Interlock Indigent  
19 Fund.

20 "(2) Twenty-five percent to the court of  
21 jurisdiction.

22 "(3) Twenty percent to the Department of Public  
23 Safety.

24 "(4) Fifteen percent to the district attorney of  
25 jurisdiction.



1           "(t) The defendant shall designate the vehicle to be  
2 used by identifying the vehicle by the vehicle identification  
3 number to the court.

4           "(u) (1) Any person who is required to comply with  
5 the ignition interlock provisions of this section as a  
6 condition of restoration or reinstatement of his or her  
7 driver's license, shall only operate the designated vehicle  
8 equipped with a functioning ignition interlock device for the  
9 period of time consistent with the offense for which he or she  
10 was convicted as provided for in this section.

11           "(2) The duration of the time an ignition interlock  
12 device is required by this section shall be doubled if the  
13 offender refused the prescribed chemical test for  
14 intoxication, or if the offender's blood alcohol concentration  
15 was 0.15 grams percent or greater.

16           "(v) (1) The Department of Public Safety may set a  
17 fee of not more than one hundred fifty dollars (\$150) for the  
18 issuance of a driver's license indicating that the person's  
19 driving privileges are subject to the condition of the  
20 installation and use of a certified ignition interlock device  
21 on a motor vehicle. Fifteen percent of the fee shall be  
22 distributed to the general fund of the county where the person  
23 was convicted to be utilized for law enforcement purposes. In  
24 addition, at the end of the time the person's driving  
25 privileges are subject to the above conditions, the department  
26 shall set a fee of not more than seventy-five dollars (\$75) to

1 reissue a regular driver's license. The fee shall be deposited  
2 as provided in Sections 32-6-5, 32-6-6, and 32-6-6.1.

3 "(2) The defendant shall provide proof of  
4 installation of an approved ignition interlock device to the  
5 Department of Public Safety as a condition of the issuance of  
6 a restricted driver's license.

7 "(3) Any ignition interlock driving violation  
8 committed by the offender during the mandated ignition  
9 interlock period shall extend the duration of ignition  
10 interlock use for six months from the date of violation.  
11 Ignition interlock driving violations include any of the  
12 following:

13 "a. A breath sample at or above a minimum blood  
14 alcohol concentration level of 0.02 recorded more than four  
15 times during the monthly reporting period.

16 "b. Any tampering, circumvention, or bypassing of  
17 the ignition interlock device, or attempt thereof.

18 "c. Failure to comply with the servicing or  
19 calibration requirements of the ignition interlock device  
20 every 30 days.

21 "(w) Nothing in this section and Section 32-5A-191.4  
22 shall require an employer to install an ignition interlock  
23 device in a vehicle owned or operated by the employer for use  
24 by an employee required to use the device as a condition of  
25 driving pursuant to this section and Section 32-5A-191.4."

26 Section 2. Although this bill would have as its  
27 purpose or effect the requirement of a new or increased

1 expenditure of local funds, the bill is excluded from further  
2 requirements and application under Amendment 621, now  
3 appearing as Section 111.05 of the Official Recompilation of  
4 the Constitution of Alabama of 1901, as amended, because the  
5 bill defines a new crime or amends the definition of an  
6 existing crime.

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