

1 SB195
2 209311-2
3 By Senators Givhan, Orr and Melson
4 RFD: Judiciary
5 First Read: 04-FEB-21

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to driving offenses; to amend Sections
12 32-5-192, 32-5A-195, and 32-5A-304, Code of Alabama 1975, to
13 revise administrative suspension periods for certain driving
14 offenses; and to make nonsubstantive, technical revisions to
15 update the existing code language to current style.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Sections 32-5-192, 32-5A-195, and
18 32-5A-304, Code of Alabama 1975, are amended to read as
19 follows:

20 "§32-5-192.

21 "(a) Any person who operates a motor vehicle ~~upon~~ on
22 the public highways of this state shall be deemed to have
23 given ~~his~~ consent, subject to ~~the provisions of~~ this division,
24 to a chemical test or tests of his or her blood, breath, or
25 urine for the purpose of determining the alcoholic content of
26 his blood if lawfully arrested for any offense arising out of
27 acts alleged to have been committed while the person was

1 driving a motor vehicle on the public highways of this state
2 while under the influence of intoxicating liquor. The test or
3 tests shall be administered at the direction of a law
4 enforcement officer having reasonable grounds to believe the
5 person to have been driving a motor vehicle upon the public
6 highways of this state while under the influence of
7 intoxicating liquor. The law enforcement agency ~~by which such~~
8 ~~that employs the officer is employed~~ shall designate which of
9 ~~the aforesaid test or tests~~ shall be administered. ~~Such~~ The
10 person shall be told that his or her failure to submit to ~~such~~
11 a chemical test will result in the suspension of his or her
12 privilege to operate a motor vehicle for a minimum period of
13 90 days, ~~provided if such.~~ If the person objects to a blood
14 test, the law enforcement agency shall designate that one of
15 the other ~~aforesaid~~ tests be administered.

16 "(b) Any person who is dead, unconscious, or who is
17 otherwise in a condition rendering him or her incapable of
18 refusal, shall be deemed not to have withdrawn the consent
19 provided by subsection (a) ~~of this section~~ and the test or
20 tests may be administered, subject to ~~the provisions of~~ this
21 division.

22 "(c) (1) If a person under arrest refuses upon the
23 request of a law enforcement officer to submit to a chemical
24 test designated by the law enforcement agency as provided in
25 subsection (a) ~~of this section~~, none shall be given, but the
26 ~~Director of Public Safety~~ Secretary of the Alabama State Law
27 Enforcement Agency, upon the receipt of a sworn report of the

1 law enforcement officer that he or she had reasonable grounds
2 to believe the arrested person had been driving a motor
3 vehicle upon the public highways of this state while under the
4 influence of intoxicating liquor and that the person had
5 refused to submit to the test upon the request of the law
6 enforcement officer, shall, ~~on the first refusal,~~ suspend his
7 or her license or permit to drive, or the privilege of driving
8 a motor vehicle on the highways of this state given to a
9 nonresident, ~~or if the person is a resident without a license~~
10 ~~or permit to operate a motor vehicle in this state, the~~
11 ~~director~~ secretary shall deny to the person the issuance of a
12 license or permit as follows, subject to review as provided in
13 subsection (e):

14 "a. For a first refusal of a test within a 10-year
15 period, for a period of 90 days, ~~subject to review as~~
16 ~~hereinafter provided.~~

17 "b. For a second ~~or subsequent~~ refusal of such a
18 test within a ~~five-year~~ 10-year period, ~~the director,~~ upon
19 ~~said receipt of a sworn report, shall suspend his license or~~
20 ~~permit to drive, or the privilege of driving a motor vehicle~~
21 ~~on the highways of this state given to a nonresident for a~~
22 ~~period of one year; or if the person is a resident without a~~
23 ~~license or permit to operate a motor vehicle in this state,~~
24 ~~the director shall deny to the person the issuance of a~~
25 ~~license or permit, for a period of one year subject to review~~
26 ~~as hereinafter provided.~~

1 "c. For a third refusal of a test within 10-year
2 period, for a period of three years.

3 "d. For a fourth or subsequent refusal of a test
4 within a 10-year period, for a period of five years.

5 "(2) If ~~such~~ the person is acquitted on the charge
6 of driving a motor vehicle upon the highways of this state
7 while under the influence of intoxicating liquor, ~~then in that~~
8 ~~event~~ the ~~Director of Public Safety~~ may secretary, in his or
9 her discretion, shall reduce ~~said~~ the period of suspension.

10 "(3) This subsection does not apply to a person who
11 is unable to perform a chemical test of his or her breath due
12 to a medical condition.

13 "(d) (1) Upon suspending the license or permit to
14 drive or the privilege of driving a motor vehicle on the
15 highways of this state given to a nonresident or any person,
16 or upon determining that the issuance of a license or permit
17 shall be denied to the person, ~~as hereinbefore~~ as provided in
18 this section ~~directed, the Director of Public Safety, the~~
19 secretary, or his or her duly authorized agent, shall
20 immediately notify the person in writing of the suspension and
21 upon ~~his~~ a request filed by the person, the secretary shall
22 ~~afford him an opportunity for~~ provide a hearing in the same
23 manner ~~and under the same conditions~~ as ~~is~~ provided in ~~Section~~
24 ~~32-6-16, for notification and hearings in the cases of~~
25 ~~suspension of licenses~~ Section 32-5A-307; except, that the
26 scope of ~~such a~~ the hearing for the purposes of this section

1 shall ~~cover the issues of whether~~ determine all of the
2 following:

3 "a. Whether a law enforcement officer had reasonable
4 grounds to believe the person had been driving a motor vehicle
5 upon the public highways of this state while under the
6 influence of intoxicating liquor, ~~whether.~~

7 "b. Whether the person was placed under arrest, ~~and~~
8 ~~whether.~~

9 "c. Whether he or she refused to submit to the test
10 upon request of the officer.

11 "(2) Whether the person was informed that his or her
12 privilege to drive would be suspended or denied if he or she
13 refused to submit to the test shall not be an issue.

14 "(3) ~~The Director of Public Safety~~ secretary shall
15 order that the suspension or determination that there should
16 be a denial of issuance either be rescinded or sustained.

17 "(e) If the suspension or determination that there
18 should be a denial of issuance is sustained by the ~~Director of~~
19 ~~Public Safety~~ secretary, or his or her authorized agent upon
20 ~~such~~ the hearing, the person whose license or permit to drive
21 or nonresident operating privilege has been suspended or to
22 whom a license or permit is denied, under ~~the provisions of~~
23 this section, shall have the right to file a petition in the
24 appropriate court to review the final order of suspension or
25 denial by the ~~director~~ secretary, or his or her duly
26 authorized agent, in the same manner ~~and under the same~~

1 ~~conditions as is provided in Section 32-6-16 in the cases of~~
2 ~~suspensions and denials 32-5A-307.~~

3 "(f) ~~When it has been finally determined under the~~
4 ~~procedures of this section~~ Upon a determination that a
5 nonresident's privilege to operate a motor vehicle in this
6 state has been suspended, ~~the director~~ secretary shall ~~give~~
7 ~~information provide,~~ in writing ~~of,~~ the action taken by this
8 state to the motor vehicle administrator of the state of the
9 person's residence and ~~of~~ to any state in which he or she has
10 a license.

11 "§32-5A-195.

12 "(a) The Secretary of the Alabama State Law
13 Enforcement Agency is authorized to cancel any driver's
14 license upon determining that the licensee was not entitled to
15 the issuance thereof or that the licensee failed to give the
16 correct or required information in his or her application.
17 Upon such cancellation, the licensee must surrender the
18 license so cancelled. If the licensee refuses to surrender the
19 license, he or she shall be guilty of a misdemeanor.

20 "(b) The privilege of driving a motor vehicle on the
21 highways of this state given to a nonresident shall be subject
22 to suspension or revocation by the ~~Secretary of the Alabama~~
23 ~~State Law Enforcement Agency~~ secretary in like manner and for
24 like cause as a driver's license issued may be suspended or
25 revoked.

26 "(c) ~~The Secretary of the Alabama State Law~~
27 ~~Enforcement Agency is further authorized~~ secretary, upon

1 receiving a record of the conviction in this state of a
2 nonresident driver of a motor vehicle of any offense, ~~to~~ may
3 forward a certified copy of ~~such~~ the record to the motor
4 vehicle administrator in the state where the person so
5 convicted is a resident.

6 "(d) When a nonresident's operating privilege is
7 suspended or revoked, the ~~Secretary of the Alabama State Law~~
8 ~~Enforcement Agency~~ secretary shall forward a certified copy of
9 the record of ~~such~~ the action to the motor vehicle
10 administrator in the state where ~~such~~ the person resides.

11 "(e) The ~~Secretary of the Alabama State Law~~
12 ~~Enforcement Agency is authorized to~~ secretary may suspend or
13 revoke the license of any resident of this state or the
14 privilege of a nonresident to drive a motor vehicle in this
15 state upon receiving notice of the conviction of ~~such~~ the
16 person in another state of any offense therein which, if
17 committed in this state, would be grounds for the suspension
18 or revocation of the license of a driver.

19 "(f) The ~~Secretary of the Alabama State Law~~
20 ~~Enforcement Agency~~ secretary may give ~~such~~ effect to conduct
21 of a resident in another state as is provided by the laws of
22 this state had ~~such~~ the conduct occurred in this state.

23 "(g) Whenever any person is convicted of any offense
24 for which this chapter makes mandatory the revocation of the
25 license of such person by the agency, the court in which the
26 conviction is had shall require the surrender to it of any
27 driver's license then held by the person convicted and the

1 court shall forward the same together with a record of such
2 conviction to the ~~Secretary of the Alabama State Law~~
3 ~~Enforcement Agency~~ secretary.

4 "(h) Every court having jurisdiction over offenses
5 committed under this article or any other law of this state or
6 municipal ordinance adopted by a local authority regulating
7 the operation of motor vehicles on highways, shall forward to
8 the ~~Secretary of the Alabama State Law Enforcement Agency~~
9 secretary within five days a record of the conviction of any
10 person in the court for a violation of any laws other than
11 regulations governing standing or parking, and may recommend
12 the suspension of the driver's license of the person ~~so~~
13 convicted.

14 "(i) For the purposes of this article, the term
15 conviction shall mean a final conviction. Also, for the
16 purposes of this article, an unvacated forfeiture of bail or
17 collateral deposited to secure a defendant's appearance in
18 court, a plea of nolo contendere accepted by the court, the
19 payment of a fine, a plea of guilty, or a finding of guilt of
20 a traffic violation charge shall be equivalent to a conviction
21 regardless of whether the penalty is rebated, suspended, or
22 probated.

23 "(j) The ~~Secretary of the Alabama State Law~~
24 ~~Enforcement Agency~~ secretary shall revoke the license of any
25 driver upon receiving a record of the driver's conviction of
26 any of the following offenses:

1 "(1) Manslaughter or homicide by vehicle resulting
2 from the operation of a motor vehicle, including a person who
3 is adjudicated as a youthful offender based on an underlying
4 charge of manslaughter or homicide by vehicle, but there shall
5 be no disclosure, other than to courts and law enforcement
6 agencies by any entity or person of any information,
7 documents, or records relating to the youthful offender's
8 arrest, conviction, or adjudication of or finding of
9 delinquency related to the manslaughter or homicide by
10 vehicle.

11 "(2) Upon a first conviction of driving or being in
12 actual physical control of any vehicle while under the
13 influence of alcohol or under the influence of a controlled
14 substance to a degree which renders him or her incapable of
15 safely driving or under the combined influence of alcohol and
16 a controlled substance to a degree which renders him or her
17 incapable of safely driving, such revocation shall take place
18 only when ordered by the court rendering the conviction.

19 "(3) Upon a second or subsequent conviction within a
20 ~~five-year~~ 10-year period, of driving or being in actual
21 physical control of any vehicle while under the influence of
22 alcohol or under the influence of a controlled substance to a
23 degree which renders him or her incapable of safely driving or
24 under the combined influence of alcohol and a controlled
25 substance to a degree which renders him or her incapable of
26 safely driving.

1 "(4) Any felony in the commission of which a motor
2 vehicle is used.

3 "(5) Failure to stop, render aid, or identify
4 himself or herself as required under the laws of this state in
5 the event of a motor vehicle accident resulting in the death
6 or personal injury of another.

7 "(6) Perjury or the making of a false affidavit or
8 statement under oath to the Secretary of the Alabama State Law
9 Enforcement Agency under this article or under any other law
10 relating to the ownership or operation of motor vehicles.

11 "(7) Conviction upon three charges of reckless
12 driving committed within a period of 12 months.

13 "(8) Unauthorized use of a motor vehicle belonging
14 to another which act does not amount to a felony.

15 "~~(k) The Secretary of the Alabama State Law~~
16 ~~Enforcement Agency is authorized to~~ secretary may suspend the
17 license of a driver without preliminary hearing upon a showing
18 by its records or other sufficient evidence that the licensee:

19 "(1) Has committed an offense for which mandatory
20 revocation of license is required upon conviction;

21 "(2) Has been convicted with such frequency of
22 serious offenses against traffic regulations governing the
23 movement of vehicles as to indicate a disrespect for traffic
24 laws and a disregard for the safety of other persons on the
25 highways;

1 "(3) Is an habitually reckless or negligent driver
2 of a motor vehicle, such fact being established by a record of
3 accidents or by other evidence;

4 "(4) Is incompetent to drive a motor vehicle;

5 "(5) Has permitted an unlawful or fraudulent use of
6 such license;

7 "(6) Has committed an offense in another state which
8 if committed in this state would be grounds for suspension or
9 revocation;

10 "(7) Has been convicted of fleeing or attempting to
11 elude a police officer; or

12 "(8) Has been convicted of racing on the highways.

13 "(1) Upon suspending the license of any person as
14 provided in this section, the ~~Secretary of the Alabama State~~
15 ~~Law Enforcement Agency~~ secretary shall immediately notify the
16 licensee in writing and upon his or her request shall afford
17 him or her an opportunity for a hearing as early as
18 practicable, not to exceed 30 days after receipt of the
19 request in the county where the licensee resides unless the
20 ~~Secretary of the Alabama State Law Enforcement Agency~~
21 secretary and the licensee agree that the hearing may be held
22 in some other county. The hearing shall be before the
23 ~~Secretary of the Alabama State Law Enforcement Agency~~
24 secretary, or his or her duly authorized agent. Upon ~~such the~~
25 hearing, the ~~Secretary of the Alabama State Law Enforcement~~
26 ~~Agency~~ secretary, or his or her duly authorized agent, may
27 administer oaths and may issue subpoenas for the attendance of

1 witnesses in the production of relevant books and papers and
2 may require a reexamination of the licensee. Upon ~~such~~ the
3 hearing, the ~~Secretary of the Alabama State Law Enforcement~~
4 ~~Agency~~ secretary, or his or her duly authorized agent, shall
5 either rescind its order of suspension or, upon a showing of
6 good cause, may continue, modify, or extend the suspension of
7 the licensee or revoke the license. If the license has been
8 suspended as a result of the licensee's driving while under
9 the influence of alcohol, the ~~Secretary of the Alabama State~~
10 ~~Law Enforcement Agency~~ secretary, or his or her agent
11 conducting the hearing, shall take into account, among other
12 relevant factors, the licensee's successful completion of any
13 duly established "highway intoxication seminar," "DWI
14 counterattack course," or similar educational program designed
15 for problem drinking drivers. If the hearing is conducted by a
16 duly authorized agent instead of by the ~~Secretary of the~~
17 ~~Alabama State Law Enforcement Agency~~ himself or herself
18 secretary, the action of ~~such~~ the agent ~~must~~ shall be approved
19 by the ~~Secretary of the Alabama Law Enforcement Agency~~
20 secretary.

21 ~~"(m) The Secretary of the Alabama State Law~~
22 ~~Enforcement Agency shall not suspend a driver's license or~~
23 ~~privilege to drive a motor vehicle upon the public highways~~
24 ~~for a period of more than one year, except as permitted under~~
25 ~~Section 32-6-19.~~

26 ~~"(n) (m)~~ At the end of the period of suspension a
27 license surrendered to the ~~Secretary of the Alabama State Law~~

1 ~~Enforcement Agency under~~ secretary pursuant to subsection ~~(o)~~
2 (n), the license shall be returned to the licensee.

3 "~~(o)~~ (n) ~~The Secretary of the Alabama State Law~~
4 ~~Enforcement Agency~~ secretary, upon cancelling, suspending, or
5 revoking a license, shall require that ~~such~~ the license be
6 surrendered to and be retained by the ~~Secretary of the Alabama~~
7 ~~State Law Enforcement Agency~~ secretary. Any person whose
8 license has been cancelled, suspended, or revoked shall
9 immediately return his or her license to the ~~Secretary of the~~
10 ~~Alabama State Law Enforcement Agency~~ secretary. If the
11 licensee refuses to surrender the license, he or she shall be
12 guilty of a misdemeanor.

13 "~~(p)~~ (o) Any resident or nonresident whose driver's
14 license or privilege to operate a motor vehicle in this state
15 has been suspended or revoked as provided in this section
16 shall not operate a motor vehicle in this state under a
17 license or permit issued by any other jurisdiction or
18 otherwise during such suspension or after such revocation
19 until a new license is obtained when and as permitted under
20 this article.

21 "~~(q)~~ (p) Any person denied a license or whose
22 license has been cancelled, suspended, or revoked by the
23 ~~Secretary of the Alabama State Law Enforcement Agency~~
24 secretary except where ~~such~~ the cancellation or revocation is
25 mandatory under ~~the provisions of~~ this article shall have the
26 right to file a petition within 30 days thereafter for a
27 hearing in the matter in the circuit court in the county where

1 the person resides. In the case of cancellation, suspension,
2 or revocation of a nonresident's operating privilege, in the
3 county ~~in which~~ where the main office of the ~~Secretary of the~~
4 ~~Alabama State Law Enforcement Agency~~ secretary is located,
5 ~~the~~. The court is vested with jurisdiction and it shall be its
6 duty to set the matter for hearing upon 30 days' written
7 notice to the secretary and to take testimony and examine into
8 the facts of the case and to determine whether the petitioner
9 is entitled to a license or is subject to suspension,
10 cancellation, or revocation of license under this section.

11 "§32-5A-304.

12 "(a) A driving privilege suspension shall become
13 effective 45 days after the person has received a notice of
14 intended suspension as provided in Section 32-5A-303, or is
15 deemed to have received a notice of suspension by mail as
16 provided in Section 32-5A-302 if no notice of intended
17 suspension was served.

18 "(b) The period of driving privilege suspension
19 under this section shall be as follows:

20 "(1) Ninety days if the driving record of a person
21 shows no prior alcohol or drug-related enforcement contacts
22 during the immediately preceding ~~five~~ 10 years.

23 "(2) One year if the driving record of a person
24 shows one prior alcohol or drug-related enforcement contact
25 during the immediately preceding ~~five~~ 10 years.

1 "(3) Three years if the driving record of a person
2 shows two ~~or three~~ prior alcohol or drug-related enforcement
3 contacts during the immediately preceding ~~five~~ 10 years.

4 "(4) Five years if the driving record of a person
5 shows ~~four~~ three or more prior alcohol or drug-related
6 enforcement contacts during the immediately preceding ~~five~~ 10
7 years.

8 "(5) For purposes of this section, "alcohol or
9 drug-related enforcement contacts" shall include all
10 suspensions under this article, any suspension or revocation
11 entered in this or any other state for a refusal to submit to
12 chemical testing under an implied consent law, and any
13 conviction in this or any other state for a violation which
14 involves driving a motor vehicle while having an unlawful
15 percent of alcohol in the blood, or while under the influence
16 of alcohol or drugs, or alcohol and drugs except that no more
17 than one alcohol or drug-related contact on any one DUI arrest
18 may be considered by the agency in determining the period of
19 suspension.

20 "(c) If a license is suspended under this section
21 for having .08 or more by weight of alcohol in the blood of
22 the person and the person is also convicted on criminal
23 charges arising out of the same occurrence for a violation of
24 Section 32-5A-191, the suspension under this section shall be
25 imposed, giving credit for suspension time served toward the
26 duration of suspension or revocation required under Section
27 32-5A-191. If a license is suspended under this section for

1 having .08 or more by weight of alcohol in the blood of the
2 person and the criminal charge against the person for
3 violation of Section 32-5A-191 is dismissed, nolle prossed, or
4 the person is acquitted of the charge, the director shall
5 rescind the suspension order and remove the administrative
6 suspension from the person's driving record, except for those
7 persons holding a commercial driver license, a commercial
8 learner license, or a person operating a commercial motor
9 vehicle."

10 Section 2. This act shall become effective on the
11 first day of the third month following its passage and
12 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 04-FEB-21

Read for the second time and placed on the calen-
dar..... 24-FEB-21

Read for the third time and passed as amended 16-MAR-21

Yeas 28
Nays 0

Patrick Harris,
Secretary.