

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

1 SB195

2
3
4 ENROLLED, An Act,

5 Relating to driving offenses; to amend Sections
6 32-5-192, 32-5A-195, and 32-5A-304, Code of Alabama 1975, to
7 revise administrative suspension periods for certain driving
8 offenses; and to make nonsubstantive, technical revisions to
9 update the existing code language to current style.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Sections 32-5-192, 32-5A-195, and
12 32-5A-304, Code of Alabama 1975, are amended to read as
13 follows:

14 "§32-5-192.

15 "(a) Any person who operates a motor vehicle ~~upon~~ on
16 the public highways of this state shall be deemed to have
17 given ~~his~~ consent, subject to ~~the provisions of~~ this division,
18 to a chemical test or tests of his or her blood, breath, or
19 urine for the purpose of determining the alcoholic content of
20 his blood if lawfully arrested for any offense arising out of
21 acts alleged to have been committed while the person was
22 driving a motor vehicle on the public highways of this state
23 while under the influence of intoxicating liquor. The test or
24 tests shall be administered at the direction of a law
25 enforcement officer having reasonable grounds to believe the

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

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14 refusal, shall be deemed not to have withdrawn the consent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

18 "(c) (1) If a person under arrest refuses upon the
19 request of a law enforcement officer to submit to a chemical
20 test designated by the law enforcement agency as provided in
21 subsection (a) ~~of this section~~, none shall be given, but the
22 ~~Director of Public Safety~~ Secretary of the Alabama State Law
23 Enforcement Agency, upon the receipt of a sworn report of the
24 law enforcement officer that he or she had reasonable grounds
25 to believe the arrested person had been driving a motor

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

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

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

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

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

5 "b. Whether the person was placed under arrest, ~~and~~
6 ~~whether.~~

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

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

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

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

1 "~~(c) The Secretary of the Alabama State Law~~
2 ~~Enforcement Agency is further authorized~~ secretary, upon
3 receiving a record of the conviction in this state of a
4 nonresident driver of a motor vehicle of any offense, ~~to~~ may
5 forward a certified copy of ~~such~~ the record to the motor
6 vehicle administrator in the state where the person so
7 convicted is a resident.

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

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

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

1 "(g) Whenever any person is convicted of any offense
2 for which this chapter makes mandatory the revocation of the
3 license of such person by the agency, the court in which the
4 conviction is had shall require the surrender to it of any
5 driver's license then held by the person convicted and the
6 court shall forward the same together with a record of such
7 conviction to the ~~Secretary of the Alabama State Law~~
8 ~~Enforcement Agency~~ secretary.

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

19 "(i) For the purposes of this article, the term
20 conviction shall mean a final conviction. Also, for the
21 purposes of this article, an unvacated forfeiture of bail or
22 collateral deposited to secure a defendant's appearance in
23 court, a plea of nolo contendere accepted by the court, the
24 payment of a fine, a plea of guilty, or a finding of guilt of
25 a traffic violation charge shall be equivalent to a conviction

1 regardless of whether the penalty is rebated, suspended, or
2 probated.

3 "(j) ~~The Secretary of the Alabama State Law~~
4 ~~Enforcement Agency~~ secretary shall revoke the license of any
5 driver upon receiving a record of the driver's conviction of
6 any of the following offenses:

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

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

1 "(3) Upon a second or subsequent conviction within a
2 ~~five-year~~ 10-year period, of driving or being in actual
3 physical control of any vehicle while under the influence of
4 alcohol or under the influence of a controlled substance to a
5 degree which renders him or her incapable of safely driving or
6 under the combined influence of alcohol and a controlled
7 substance to a degree which renders him or her incapable of
8 safely driving.

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

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

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

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

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

23 "~~(k) The Secretary of the Alabama State Law~~
24 ~~Enforcement Agency is authorized to~~ secretary may suspend the

1 license of a driver without preliminary hearing upon a showing
2 by its records or other sufficient evidence that the licensee:

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

5 "(2) Has been convicted with such frequency of
6 serious offenses against traffic regulations governing the
7 movement of vehicles as to indicate a disrespect for traffic
8 laws and a disregard for the safety of other persons on the
9 highways;

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

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

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

16 "(6) Has committed an offense in another state which
17 if committed in this state would be grounds for suspension or
18 revocation;

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

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

22 "(1) Upon suspending the license of any person as
23 provided in this section, the ~~Secretary of the Alabama State~~
24 ~~Law Enforcement Agency~~ secretary shall immediately notify the
25 licensee in writing and upon his or her request shall afford

1 him or her an opportunity for a hearing as early as
2 practicable, not to exceed 30 days after receipt of the
3 request in the county where the licensee resides unless the
4 ~~Secretary of the Alabama State Law Enforcement Agency~~
5 secretary and the licensee agree that the hearing may be held
6 in some other county. The hearing shall be before the
7 ~~Secretary of the Alabama State Law Enforcement Agency~~
8 secretary, or his or her duly authorized agent. Upon ~~such the~~
9 hearing, the ~~Secretary of the Alabama State Law Enforcement~~
10 ~~Agency~~ secretary, or his or her duly authorized agent, may
11 administer oaths and may issue subpoenas for the attendance of
12 witnesses in the production of relevant books and papers and
13 may require a reexamination of the licensee. Upon ~~such the~~
14 hearing, the ~~Secretary of the Alabama State Law Enforcement~~
15 ~~Agency~~ secretary, or his or her duly authorized agent, shall
16 either rescind its order of suspension or, upon a showing of
17 good cause, may continue, modify, or extend the suspension of
18 the licensee or revoke the license. If the license has been
19 suspended as a result of the licensee's driving while under
20 the influence of alcohol, the ~~Secretary of the Alabama State~~
21 ~~Law Enforcement Agency~~ secretary, or his or her agent
22 conducting the hearing, shall take into account, among other
23 relevant factors, the licensee's successful completion of any
24 duly established "highway intoxication seminar," "DWI
25 counterattack course," or similar educational program designed

1 for problem drinking drivers. If the hearing is conducted by a
2 duly authorized agent instead of by the ~~Secretary of the~~
3 ~~Alabama State Law Enforcement Agency himself or herself~~
4 secretary, the action of ~~such the~~ agent ~~must~~ shall be approved
5 by the ~~Secretary of the Alabama Law Enforcement Agency~~
6 secretary.

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

12 ~~"(n) (m)~~ At the end of the period of suspension a
13 license surrendered to the ~~Secretary of the Alabama State Law~~
14 ~~Enforcement Agency under~~ secretary pursuant to subsection ~~(o)~~
15 (n), the license shall be returned to the licensee.

16 ~~"(o) (n)~~ The ~~Secretary of the Alabama State Law~~
17 ~~Enforcement Agency~~ secretary, upon cancelling, suspending, or
18 revoking a license, shall require that ~~such the~~ license be
19 surrendered to and be retained by the ~~Secretary of the Alabama~~
20 ~~State Law Enforcement Agency~~ secretary. Any person whose
21 license has been cancelled, suspended, or revoked shall
22 immediately return his or her license to the ~~Secretary of the~~
23 ~~Alabama State Law Enforcement Agency~~ secretary. If the
24 licensee refuses to surrender the license, he or she shall be
25 guilty of a misdemeanor.

1 "~~(p)~~ (o) Any resident or nonresident whose driver's
2 license or privilege to operate a motor vehicle in this state
3 has been suspended or revoked as provided in this section
4 shall not operate a motor vehicle in this state under a
5 license or permit issued by any other jurisdiction or
6 otherwise during such suspension or after such revocation
7 until a new license is obtained when and as permitted under
8 this article.

9 "~~(q)~~ (p) Any person denied a license or whose
10 license has been cancelled, suspended, or revoked by the
11 ~~Secretary of the Alabama State Law Enforcement Agency~~
12 secretary except where ~~such~~ the cancellation or revocation is
13 mandatory under ~~the provisions of~~ this article shall have the
14 right to file a petition within 30 days thereafter for a
15 hearing in the matter in the circuit court in the county where
16 the person resides. In the case of cancellation, suspension,
17 or revocation of a nonresident's operating privilege, in the
18 county ~~in which~~ where the main office of the ~~Secretary of the~~
19 ~~Alabama State Law Enforcement Agency~~ secretary is located,
20 ~~the~~ The court is vested with jurisdiction and it shall be its
21 duty to set the matter for hearing upon 30 days' written
22 notice to the secretary and to take testimony and examine into
23 the facts of the case and to determine whether the petitioner
24 is entitled to a license or is subject to suspension,
25 cancellation, or revocation of license under this section.

1 "§32-5A-304.

2 "(a) A driving privilege suspension shall become
3 effective 45 days after the person has received a notice of
4 intended suspension as provided in Section 32-5A-303, or is
5 deemed to have received a notice of suspension by mail as
6 provided in Section 32-5A-302 if no notice of intended
7 suspension was served.

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

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

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

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

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

23 "(5) For purposes of this section, "alcohol or
24 drug-related enforcement contacts" shall include all
25 suspensions under this article, any suspension or revocation

1 entered in this or any other state for a refusal to submit to
2 chemical testing under an implied consent law, and any
3 conviction in this or any other state for a violation which
4 involves driving a motor vehicle while having an unlawful
5 percent of alcohol in the blood, or while under the influence
6 of alcohol or drugs, or alcohol and drugs except that no more
7 than one alcohol or drug-related contact on any one DUI arrest
8 may be considered by the agency in determining the period of
9 suspension.

10 "(c) If a license is suspended under this section
11 for having .08 or more by weight of alcohol in the blood of
12 the person and the person is also convicted on criminal
13 charges arising out of the same occurrence for a violation of
14 Section 32-5A-191, the suspension under this section shall be
15 imposed, giving credit for suspension time served toward the
16 duration of suspension or revocation required under Section
17 32-5A-191. If a license is suspended under this section for
18 having .08 or more by weight of alcohol in the blood of the
19 person and the criminal charge against the person for
20 violation of Section 32-5A-191 is dismissed, nolle prossed, or
21 the person is acquitted of the charge, the director shall
22 rescind the suspension order and remove the administrative
23 suspension from the person's driving record, except for those
24 persons holding a commercial driver license, a commercial

1 learner license, or a person operating a commercial motor
2 vehicle."

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB195

Senate 16-MAR-21

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Amended and passed 27-APR-21

Senate concurred in House amendment 29-APR-21

By: Senator Givhan