

1 SB386  
2 127043-2  
3 By Senator Orr  
4 RFD: Judiciary  
5 First Read: 12-APR-11

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8 SYNOPSIS: Existing law provides penalties for driving  
9 while under the influence of alcohol or controlled  
10 substances.

11 This bill would further increase the minimum  
12 mandatory sentence for a fourth or subsequent  
13 violation of the law from 10 days to 90 days.

14 Existing law provides that a prior  
15 conviction within a five-year period for driving  
16 while under the influence from this state, a  
17 municipality within this state, or another state or  
18 territory or a municipality of another state or  
19 territory would be considered by a court when  
20 imposing a sentence.

21 This bill would remove the requirement that  
22 a prior conviction considered by a court when  
23 imposing a sentence would only be a prior  
24 conviction within a five-year period and would  
25 provide that any prior conviction for driving while  
26 impaired from this state, a municipality within  
27 this state, or another state or territory or a



1 TO BE ENTITLED

2 AN ACT

3  
4 To amend Section 32-5A-191 of the Code of Alabama  
5 1975, relating to driving while under the influence; to  
6 further provide for a minimum mandatory sentence for a fourth  
7 or subsequent violation; to remove the requirement that a  
8 prior conviction considered by the court when imposing a  
9 sentence would only be a prior conviction within a five-year  
10 period; to further provide for the offenses that can be  
11 considered by a court when imposing a sentence for multiple  
12 violations; and in connection therewith would have as its  
13 purpose or effect the requirement of a new or increased  
14 expenditure of local funds within the meaning of Amendment 621  
15 of the Constitution of Alabama of 1901, now appearing as  
16 Section 111.05 of the Official Recompilation of the  
17 Constitution of Alabama of 1901, as amended.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Section 32-5A-191 of the Code of Alabama  
20 1975, is amended to read as follows:

21 "§32-5A-191.

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

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

26 "(2) Under the influence of alcohol;

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

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

7           "(5) Under the influence of any substance which  
8 impairs the mental or physical faculties of such person to a  
9 degree which renders him or her incapable of safely driving.

10           "(b) A person who is under the age of 21 years shall  
11 not drive or be in actual physical control of any vehicle if  
12 there is .02 percentage or more by weight of alcohol in his or  
13 her blood. The Department of Public Safety shall suspend or  
14 revoke the driver's license of any person, including, but not  
15 limited to, a juvenile, child, or youthful offender, convicted  
16 or adjudicated of, or subjected to a finding of delinquency  
17 based on this subsection. Notwithstanding the foregoing, upon  
18 the first violation of this subsection by a person whose blood  
19 alcohol level is between .02 and .08, the person's driver's  
20 license or driving privilege shall be suspended for a period  
21 of 30 days in lieu of any penalties provided in subsection (e)  
22 of this section and there shall be no disclosure, other than  
23 to courts, law enforcement agencies, and the person's  
24 employer, by any entity or person of any information,  
25 documents, or records relating to the person's arrest,  
26 conviction, or adjudication of or finding of delinquency based  
27 on this subsection.

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

10 "(c) (1) A school bus or day care driver shall not  
11 drive or be in actual physical control of any vehicle while in  
12 performance of his or her duties if there is greater than .02  
13 percentage by weight of alcohol in his or her blood. A person  
14 convicted pursuant to this subsection shall be subject to the  
15 penalties provided by this section except that on the first  
16 conviction the Director of Public Safety shall suspend the  
17 driving privilege or driver's license for a period of one  
18 year.

19 "(2) A person shall not drive or be in actual  
20 physical control of a commercial motor vehicle as defined in  
21 49 CFR Part 390.5 of the Federal Motor Carrier Safety  
22 Regulations as adopted pursuant to Section 32-9A-2, if there  
23 is .04 percentage or greater by weight of alcohol in his or  
24 her blood. Notwithstanding the other provisions of this  
25 section, the commercial driver's license or commercial driving  
26 privilege of a person convicted of violating this subdivision  
27 shall be suspended for the period provided in accordance with

1 49 CFR Part 383.51 or 49 CFR Part 391.15, as applicable, and  
2 the person's regular driver's license or privilege to drive a  
3 regular motor vehicle shall be governed by the remainder of  
4 this section if the person is guilty of a violation of another  
5 provision of this section.

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

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

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

1 community service for not less than 30 days. In addition the  
2 Director of Public Safety shall revoke the driving privileges  
3 or driver's license of the person convicted for a period of  
4 one year.

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

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



1 shall be a minimum mandatory sentence of ~~10~~ 90 days which  
2 shall be served in the county jail. The remainder of the  
3 sentence may be suspended or probated, but only if as a  
4 condition of probation the defendant enrolls and successfully  
5 completes a state certified chemical dependency program  
6 recommended by the court referral officer and approved by the  
7 sentencing court. Where probation is granted, the sentencing  
8 court may, in its discretion, and where monitoring equipment  
9 is available, place the defendant on house arrest under  
10 electronic surveillance during the probationary term. In  
11 addition to the other penalties authorized, the Director of  
12 Public Safety shall revoke the driving privilege or driver's  
13 license of the person convicted for a period of five years.

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

19 "(i) In addition to the penalties provided herein,  
20 any person convicted of violating this section shall be  
21 referred to the court referral officer for evaluation and  
22 referral to appropriate community resources. The defendant  
23 shall, at a minimum, be required to complete a DUI or  
24 substance abuse court referral program approved by the  
25 Administrative Office of Courts and operated in accordance  
26 with provisions of the Mandatory Treatment Act of 1990,  
27 Sections 12-23-1 to 12-23-19, inclusive. The Department of

1 Public Safety shall not reissue a driver's license to a person  
2 convicted under this section without receiving proof that the  
3 defendant has successfully completed the required program.

4 "(j) Neither reckless driving nor any other traffic  
5 infraction is a lesser included offense under a charge of  
6 driving under the influence of alcohol or of a controlled  
7 substance.

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

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

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

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

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

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

14           "~~(o) A prior conviction within a five-year period~~  
15 ~~for driving under the influence of alcohol or drugs from this~~  
16 ~~state, a municipality within this state, or another state or~~  
17 ~~territory or a municipality of another state or territory~~  
18 ~~shall be considered by a court for imposing a sentence~~  
19 pursuant to this section. Any prior conviction for an offense  
20 of driving while impaired from this state, a municipality  
21 within this state, or another state or territory or a  
22 municipality of another state or territory, with or without  
23 the jurisdiction having adopted the law of Alabama, so long as  
24 the offense was in violation of the law in the respective  
25 jurisdiction, including, but not limited to, the following  
26 offenses shall be considered by a court for imposing a  
27 sentence pursuant to this section:

1           "(1) Driving while the blood alcohol level of the  
2 defendant was at or in excess of the legal limit imposed by  
3 law of the jurisdiction in which the offense occurred at the  
4 time the offense occurred.

5           "(2) Driving while under the influence of alcohol.

6           "(3) Driving while under the influence of a  
7 controlled substance to a degree which renders him or her  
8 incapable of safely driving.

9           "(4) Driving while under the combined influence of  
10 alcohol and a controlled substance to a degree which renders  
11 him or her incapable of safely driving.

12           "(5) Driving while under the influence of any  
13 substance which impairs the mental or physical faculties of  
14 such person to a degree which renders him or her incapable of  
15 safely driving.

16           "(p) 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.