

1 SB67
2 125583-2
3 By Senators Glover, Williams, Bussman, Scofield, Reed, Brooks,
4 Sanford, Taylor, Holtzclaw and Beason
5 RFD: Judiciary
6 First Read: 01-MAR-11

2
3
4 ENGROSSED

5
6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to Alabama's DUI law; to amend Section
12 32-5A-191 of the Code of Alabama 1975; to provide for a
13 mandatory sentence of at least double the minimum punishment
14 for a person convicted of DUI who has 0.15 percent or more by
15 weight of alcohol in his or her blood within four hours of
16 operating or being in control of a motor vehicle; and in
17 connection therewith would have as its purpose or effect the
18 requirement of a new or increased expenditure of local funds
19 within the meaning of Amendment 621 of the Constitution of
20 Alabama of 1901, now appearing as Section 111.05 of the
21 Official Recompilation of the Constitution of Alabama of 1901,
22 as amended.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Section 32-5A-191 of the Code of Alabama
25 1975, is amended to read as follows:

26 "§32-5A-191.

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

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

5 "(2) Under the influence of alcohol;

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

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

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

15 "(b) A person who is under the age of 21 years shall
16 not drive or be in actual physical control of any vehicle if
17 there is 0.02 percentage percent or more by weight of alcohol
18 in his or her blood. The Department of Public Safety shall
19 suspend or revoke the driver's license of any person,
20 including, but not limited to, a juvenile, child, or youthful
21 offender, convicted or adjudicated of, or subjected to a
22 finding of delinquency based on this subsection.

23 Notwithstanding the foregoing, upon the first violation of
24 this subsection by a person whose blood alcohol level is
25 between 0.02 and 0.08, the person's driver's license or
26 driving privilege shall be suspended for a period of 30 days
27 in lieu of any penalties provided in subsection (e) of this

1 section, and there shall be no disclosure, other than to
2 courts, law enforcement agencies, and the person's employer,
3 by any entity or person of any information, documents, or
4 records relating to the person's arrest, conviction, or
5 adjudication of or finding of delinquency based on this
6 subsection.

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

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

25 "(2) A person shall not drive or be in actual
26 physical control of a commercial motor vehicle, as defined in
27 49 CFR Part 390.5 of the Federal Motor Carrier Safety

1 Regulations as adopted pursuant to Section 32-9A-2, if there
2 is 0.04 ~~percentage~~ percent or greater by weight of alcohol in
3 his or her blood. Notwithstanding the other provisions of this
4 section, the commercial driver's license or commercial driving
5 privilege of a person convicted of violating this subdivision
6 shall be suspended for the period provided in accordance with
7 49 CFR Part 383.51 or 49 CFR Part 391.15, as applicable, and
8 the person's regular driver's license or privilege to drive a
9 regular motor vehicle shall be governed by the remainder of
10 this section if the person is guilty of a violation of another
11 provision of this section.

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

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

25 "(f) On a second conviction within a five-year
26 period, a person convicted of violating this section shall be
27 punished by a fine of not less than one thousand one hundred

1 dollars (\$1,100) nor more than five thousand one hundred
2 dollars (\$5,100) and by imprisonment, which may include hard
3 labor, in the county or municipal jail for not more than one
4 year. The sentence shall include a mandatory sentence, which
5 is not subject to suspension or probation, of imprisonment in
6 the county or municipal jail for not less than five days or
7 community service for not less than 30 days. In addition the
8 Director of Public Safety shall revoke the driving privileges
9 or driver's license of the person convicted for a period of
10 one year.

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

22 "(h) On a fourth or subsequent conviction, a person
23 convicted of violating this section shall be guilty of a Class
24 C felony and punished by a fine of not less than four thousand
25 one hundred dollars (\$4,100) nor more than ten thousand one
26 hundred dollars (\$10,100) and by imprisonment of not less than
27 one year and one day nor more than 10 years. Any term of

1 imprisonment may include hard labor for the county or state,
2 and where imprisonment does not exceed three years,
3 confinement may be in the county jail. Where imprisonment does
4 not exceed one year and one day, confinement shall be in the
5 county jail. The minimum sentence shall include a term of
6 imprisonment for at least one year and one day, provided,
7 however, that there shall be a minimum mandatory sentence of
8 10 days which shall be served in the county jail. The
9 remainder of the sentence may be suspended or probated, but
10 only if as a condition of probation the defendant enrolls and
11 successfully completes a state certified chemical dependency
12 program recommended by the court referral officer and approved
13 by the sentencing court. Where probation is granted, the
14 sentencing court may, in its discretion, and where monitoring
15 equipment is available, place the defendant on house arrest
16 under electronic surveillance during the probationary term. In
17 addition to the other penalties authorized, the Director of
18 Public Safety shall revoke the driving privilege or driver's
19 license of the person convicted for a period of five years.

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

25 "(i) When any person convicted of violating this
26 section is found to have had at least 0.15 percent or more by
27 weight of alcohol in his or her blood within four hours of

1 operating or being in actual physical control of a vehicle, he
2 or she shall be sentenced to at least double the minimum
3 punishment that the person would have received if he or she
4 had had less than 0.15 percent by weight of alcohol in his or
5 her blood and shall be required to pay the cost of
6 incarceration for any time served in the county jail pursuant
7 to this subsection, which monies shall be paid to the county
8 general fund for operation of the county jail. If the
9 adjudicated offense is a misdemeanor, the minimum punishment
10 shall be imprisonment for one year, all of which may be
11 suspended except as otherwise provided for in Section
12 32-5A-191(f). In addition, the Director of Public Safety shall
13 revoke the driving privileges or driver's license of the
14 person convicted for a period of 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 and shall be required to pay the cost of incarceration
22 for any time served in the county jail pursuant to this
23 subsection, which monies shall be paid to the county general
24 fund for operation of the county jail.

25 "(i)(k) In addition to the penalties provided
26 herein, any person convicted of violating this section shall
27 be referred to the court referral officer for evaluation and

1 referral to appropriate community resources. The defendant
2 shall, at a minimum, be required to complete a DUI or
3 substance abuse court referral program approved by the
4 Administrative Office of Courts and operated in accordance
5 with provisions of the Mandatory Treatment Act of 1990,
6 Sections 12-23-1 to 12-23-19, inclusive. The Department of
7 Public Safety shall not reissue a driver's license to a person
8 convicted under this section without receiving proof that the
9 defendant has successfully completed the required program.

10 ~~"(j)(1)~~ Neither reckless driving nor any other
11 traffic infraction is a lesser included offense under a charge
12 of driving under the influence of alcohol or of a controlled
13 substance.

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

1 1997, and thereafter, the second one hundred dollars (\$100) of
2 that additional amount shall be deposited in the Impaired
3 Drivers Trust Fund after deducting five percent of the one
4 hundred dollars (\$100) for administrative costs and the
5 remainder of the funds shall be deposited to the State General
6 Fund. Fines collected for violations of this section charged
7 pursuant to a municipal ordinance where the total fine is paid
8 at one time shall be deposited as follows: The first three
9 hundred fifty dollars (\$350) collected for a first conviction,
10 the first six hundred dollars (\$600) collected for a second
11 conviction within five years, the first one thousand one
12 hundred dollars (\$1,100) collected for a third conviction, and
13 the first two thousand one hundred dollars (\$2,100) collected
14 for a fourth or subsequent conviction shall be deposited to
15 the State Treasury with the first one hundred dollars (\$100)
16 collected for each conviction credited to the Alabama Chemical
17 Testing Training and Equipment Trust Fund and the second one
18 hundred dollars (\$100) to the Impaired Drivers Trust Fund
19 after deducting five percent of the one hundred dollars (\$100)
20 for administrative costs and depositing this amount in the
21 general fund of the municipality, and the balance credited to
22 the State General Fund. Any amounts collected over these
23 amounts shall be deposited as otherwise provided by law. Fines
24 collected for violations of this section charged pursuant to a
25 municipal ordinance, where the fine is paid on a partial or
26 installment basis, shall be deposited as follows: The first
27 two hundred dollars (\$200) of the fine collected for any

1 conviction shall be deposited to the State Treasury with the
2 first one hundred dollars (\$100) collected for any conviction
3 credited to the Alabama Chemical Testing Training and
4 Equipment Trust Fund and the second one hundred dollars (\$100)
5 for any conviction credited to the Impaired Drivers Trust Fund
6 after deducting five percent of the one hundred dollars (\$100)
7 for administrative costs and depositing this amount in the
8 general fund of the municipality. The second three hundred
9 dollars (\$300) of the fine collected for a first conviction,
10 the second eight hundred dollars (\$800) collected for a second
11 conviction, the second one thousand eight hundred dollars
12 (\$1,800) collected for a third conviction, and the second
13 three thousand eight hundred dollars (\$3,800) collected for a
14 fourth conviction shall be divided with 50 percent of the
15 funds collected to be deposited to the State Treasury to be
16 credited to the State General Fund and 50 percent deposited as
17 otherwise provided by law for municipal ordinance violations.
18 Any amounts collected over these amounts shall be deposited as
19 otherwise provided by law for municipal ordinance violations.
20 Notwithstanding any provision of law to the contrary, 90
21 percent of any fine assessed and collected for any DUI offense
22 charged by municipal ordinance violation in district or
23 circuit court shall be computed only on the amount assessed
24 over the minimum fine authorized, and upon collection shall be
25 distributed to the municipal general fund with the remaining
26 10 percent distributed to the State General Fund.

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

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

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

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

26 "~~(p)~~ (r) Any person convicted of driving under the
27 influence of alcohol, or a controlled substance, or both, or

1 any substance which impairs the mental or physical faculties
2 in violation of this section, a municipal ordinance adopting
3 this section, or a similar law from another state or territory
4 or a municipality of another state or territory more than once
5 in a five-year period shall have his or her motor vehicle
6 registration for all vehicles owned by the repeat offender
7 suspended by the Alabama Department of Revenue for the
8 duration of the offender's driver's license suspension period,
9 unless such action would impose an undue hardship to any
10 individual, not including the repeat offender, who is
11 completely dependent on the motor vehicle for the necessities
12 of life, including any family member of the repeat offender
13 and any co-owner of the vehicle."

14 Section 2. Although this bill would have as its
15 purpose or effect the requirement of a new or increased
16 expenditure of local funds, the bill is excluded from further
17 requirements and application under Amendment 621, now
18 appearing as Section 111.05 of the Official Recompilation of
19 the Constitution of Alabama of 1901, as amended, because the
20 bill defines a new crime or amends the definition of an
21 existing crime.

22 Section 3. This act shall become effective on the
23 first day of the third month following its passage and
24 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

Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 01-MAR-11

Read for the second time and placed on the calen-
dar 1 amendment..... 09-MAR-11

Read for the third time and passed as amended 24-MAR-11

Yeas 35
Nays 0

Patrick Harris
Secretary