

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

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8 SYNOPSIS: Under existing law, there are no additional  
9 penalties for driving under the influence with an  
10 extreme percentage of blood alcohol content.

11 This bill would double the minimum sentence  
12 for a person convicted of DUI who has 0.15 percent  
13 or greater by weight of alcohol in his or her  
14 blood.

15 Amendment 621 of the Constitution of Alabama  
16 of 1901, now appearing as Section 111.05 of the  
17 Official Recompilation of the Constitution of  
18 Alabama of 1901, as amended, prohibits a general  
19 law whose purpose or effect would be to require a  
20 new or increased expenditure of local funds from  
21 becoming effective with regard to a local  
22 governmental entity without enactment by a 2/3 vote  
23 unless: it comes within one of a number of  
24 specified exceptions; it is approved by the  
25 affected entity; or the Legislature appropriates  
26 funds, or provides a local source of revenue, to  
27 the entity for the purpose.

1           The purpose or effect of this bill would be  
2           to require a new or increased expenditure of local  
3           funds within the meaning of the amendment. However,  
4           the bill does not require approval of a local  
5           governmental entity or enactment by a 2/3 vote to  
6           become effective because it comes within one of the  
7           specified exceptions contained in the amendment.

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9                                   A BILL  
10                                  TO BE ENTITLED  
11                                  AN ACT

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

25           BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26                    Section 1. Section 32-5A-191 of the Code of Alabama  
27           1975, is amended to read as follows:

1           "§32-5A-191.

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

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

6           "(2) Under the influence of alcohol;

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

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

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

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

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

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

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

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

26 "(2) A person shall not drive or be in actual  
27 physical control of a commercial motor vehicle, as defined in

1 49 CFR Part 390.5 of the Federal Motor Carrier Safety  
2 Regulations as adopted pursuant to Section 32-9A-2, if there  
3 is 0.04 ~~percentage~~ percent or greater by weight of alcohol in  
4 his or her blood. Notwithstanding the other provisions of this  
5 section, the commercial driver's license or commercial driving  
6 privilege of a person convicted of violating this subdivision  
7 shall be suspended for the period provided in accordance with  
8 49 CFR Part 383.51 or 49 CFR Part 391.15, as applicable, and  
9 the person's regular driver's license or privilege to drive a  
10 regular motor vehicle shall be governed by the remainder of  
11 this section if the person is guilty of a violation of another  
12 provision of this section.

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

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

26 "(f) On a second conviction within a five-year  
27 period, a person convicted of violating this section shall be

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

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

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

1 one year and one day nor more than 10 years. Any term of  
2 imprisonment may include hard labor for the county or state,  
3 and where imprisonment does not exceed three years, l  
4 confinement may be in the county jail. Where imprisonment does  
5 not exceed one year and one day, confinement shall be in the  
6 county jail. The minimum sentence shall include a term of  
7 imprisonment for at least one year and one day, provided,  
8 however, that there shall be a minimum mandatory sentence of  
9 10 days which shall be served in the county jail. The  
10 remainder of the sentence may be suspended or probated, but  
11 only if as a condition of probation the defendant enrolls and  
12 successfully completes a state certified chemical dependency  
13 program recommended by the court referral officer and approved  
14 by the sentencing court. Where probation is granted, the  
15 sentencing court may, in its discretion, and where monitoring  
16 equipment is available, place the defendant on house arrest  
17 under electronic surveillance during the probationary term. In  
18 addition to the other penalties authorized, the Director of  
19 Public Safety shall revoke the driving privilege or driver's  
20 license of the person convicted for a period of five years.

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

26 "(i) When any person convicted of violating this  
27 section is found to have had at least 0.15 percent or more by



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

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

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

1 Sections 12-23-1 to 12-23-19, inclusive. The Department of  
2 Public Safety shall not reissue a driver's license to a person  
3 convicted under this section without receiving proof that the  
4 defendant has successfully completed the required program.

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

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

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

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

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

1           "~~(m)~~ (o) 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)~~ (p) 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)~~ (q) 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.

20           "~~(p)~~ (r) Any person convicted of driving under the  
21 influence of alcohol, or a controlled substance, or both, or  
22 any substance which impairs the mental or physical faculties  
23 in violation of this section, a municipal ordinance adopting  
24 this section, or a similar law from another state or territory  
25 or a municipality of another state or territory more than once  
26 in a five-year period shall have his or her motor vehicle  
27 registration for all vehicles owned by the repeat offender

1 suspended by the Alabama Department of Revenue for the  
2 duration of the offender's driver's license suspension period,  
3 unless such action would impose an undue hardship to any  
4 individual, not including the repeat offender, who is  
5 completely dependent on the motor vehicle for the necessities  
6 of life, including any family member of the repeat offender  
7 and any co-owner of the vehicle."

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

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