

1 HB527
2 150977-1
3 By Representatives Johnson (W), Ball, McCutcheon, Farley,
4 Treadaway and Greer
5 RFD: Public Safety and Homeland Security
6 First Read: 02-APR-13

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8 SYNOPSIS: Under existing law, a person convicted of
9 driving a motor vehicle with at least 0.15 percent
10 or more by weight of alcohol in his or her blood is
11 required to be sentenced to at least double the
12 minimum punishment and to have his or her driver's
13 license suspended for a period of not less than one
14 year.

15 This bill would provide that a person
16 convicted of driving a motor vehicle with at least
17 0.15 percent or more by weight of alcohol in his or
18 her blood may be ordered to abstain from consuming
19 alcoholic beverages and to wear a continuous
20 alcohol monitoring device for a period of up to one
21 year.

22 Amendment 621 of the Constitution of Alabama
23 of 1901, now appearing as Section 111.05 of the
24 Official Recompilation of the Constitution of
25 Alabama of 1901, as amended, prohibits a general
26 law whose purpose or effect would be to require a
27 new or increased expenditure of local funds from

1 becoming effective with regard to a local
2 governmental entity without enactment by a 2/3 vote
3 unless: it comes within one of a number of
4 specified exceptions; it is approved by the
5 affected entity; or the Legislature appropriates
6 funds, or provides a local source of revenue, to
7 the entity for the purpose.

8 The purpose or effect of this bill would be
9 to require a new or increased expenditure of local
10 funds within the meaning of the amendment. However,
11 the bill does not require approval of a local
12 governmental entity or enactment by a 2/3 vote to
13 become effective because it comes within one of the
14 specified exceptions contained in the amendment.

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT
19

20 Relating to driving under the influence; to amend
21 Section 32-5A-191, Code of Alabama 1975, as amended by Act
22 2012-363 of the 2012 Regular Session, to provide additional
23 penalties for persons convicted of driving under the influence
24 with at least 0.15 percent or more by weight of alcohol in his
25 or her blood; to define a term; to provide that the court may
26 order the defendant to abstain from consuming alcohol and to
27 wear a continuous alcohol monitoring device for up to one

1 year; and in connection therewith would have as its purpose or
2 effect the requirement of a new or increased expenditure of
3 local funds within the meaning of Amendment 621 of the
4 Constitution of Alabama of 1901, now appearing as Section
5 111.05 of the Official ReCompilation of the Constitution of
6 Alabama of 1901, as amended.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Section 32-5A-191, Code of Alabama 1975,
9 as amended by Act 2012-363 of the 2012 Regular Session, is
10 amended to read as follows:

11 "§32-5A-191.

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

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

16 "(2) Under the influence of alcohol;

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

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

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

26 "(b) A person who is under the age of 21 years shall
27 not drive or be in actual physical control of any vehicle if

1 there is 0.02 percent or more by weight of alcohol in his or
2 her blood. The Department of Public Safety shall suspend or
3 revoke the driver's license of any person, including, but not
4 limited to, a juvenile, child, or youthful offender, convicted
5 or adjudicated of, or subjected to a finding of, delinquency
6 based on this subsection. Notwithstanding the foregoing, upon
7 the first violation of this subsection by a person whose blood
8 alcohol level is between 0.02 and 0.08, the person's driver's
9 license or driving privilege shall be suspended for a period
10 of 30 days in lieu of any penalties provided in subsection (e)
11 of this section, and there shall be no disclosure, other than
12 to courts, law enforcement agencies, and the person's
13 employer, by any entity or person of any information,
14 documents, or records relating to the person's arrest,
15 conviction, or adjudication of or finding of delinquency based
16 on this subsection.

17 "All persons, except as otherwise provided in this
18 subsection for a first offense, including, but not limited to,
19 a juvenile, child, or youthful offender, convicted or
20 adjudicated of or subjected to a finding of delinquency based
21 on this subsection shall be fined pursuant to this section,
22 notwithstanding any other law to the contrary, and the person
23 shall also be required to attend and complete a DUI or
24 substance abuse court referral program in accordance with
25 subsection (k).

26 "(c) (1) A school bus or day care driver shall not
27 drive or be in actual physical control of any vehicle while in

1 performance of his or her duties if there is greater than 0.02
2 percent by weight of alcohol in his or her blood. A person
3 convicted pursuant to this subsection shall be subject to the
4 penalties provided by this section, except that on the first
5 conviction the Director of Public Safety shall suspend the
6 driving privilege or driver's license for a period of one
7 year.

8 "(2) A person shall not drive or be in actual
9 physical control of a commercial motor vehicle, as defined in
10 49 CFR Part 383.5 of the Federal Motor Carrier Safety
11 Regulations as adopted pursuant to Section 32-9A-2, if there
12 is 0.04 percent or greater by weight of alcohol in his or her
13 blood. Notwithstanding the other provisions of this section,
14 the commercial driver's license or commercial driving
15 privilege of a person convicted of violating this subdivision
16 shall be disqualified for the period provided in accordance
17 with 49 CFR Part 383.51, as applicable, and the person's
18 regular driver's license or privilege to drive a regular motor
19 vehicle shall be governed by the remainder of this section if
20 the person is guilty of a violation of another provision of
21 this section.

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

26 "(e) Upon first conviction, a person violating this
27 section shall be punished by imprisonment in the county or

1 municipal jail for not more than one year, or by fine of not
2 less than six hundred dollars (\$600) nor more than two
3 thousand one hundred dollars (\$2,100), or by both a fine and
4 imprisonment. In addition, on a first conviction, the Director
5 of Public Safety shall suspend the driving privilege or
6 driver's license of the person convicted for a period of 90
7 days. If, on a first conviction, any person refusing to
8 provide a blood alcohol concentration or if a child under the
9 age of 14 years was present in the vehicle at the time of the
10 offense or if someone else besides the offender was injured at
11 the time of the offense, the Director of the Department of
12 Public Safety shall suspend the driving privilege or driver's
13 license of the person convicted for a period of 90 days and
14 the person shall be required to have an ignition interlock
15 device installed and operating on the designated motor vehicle
16 driven by the offender for a period of two years from the date
17 of issuance of a driver's license indicating that the person's
18 driving privileges are subject to the condition of the
19 installation and use of a certified ignition interlock device
20 on a motor vehicle.

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

1 is not subject to suspension or probation, of imprisonment in
2 the county or municipal jail for not less than five days or
3 community service for not less than 30 days. In addition the
4 Director of Public Safety shall revoke the driving privileges
5 or driver's license of the person convicted for a period of
6 one year and the offender shall be required to have an
7 ignition interlock device installed and operating on the
8 designated motor vehicle driven by the offender for a period
9 of two years from the date of issuance of a driver's license
10 indicating that the person's driving privileges are subject to
11 the condition of the installation and use of a certified
12 ignition interlock device on a motor vehicle.

13 "(g) On a third conviction, a person convicted of
14 violating this section shall be punished by a fine of not less
15 than two thousand one hundred dollars (\$2,100) nor more than
16 ten thousand one hundred dollars (\$10,100) and by
17 imprisonment, which may include hard labor, in the county or
18 municipal jail for not less than 60 days nor more than one
19 year, to include a minimum of 60 days which shall be served in
20 the county or municipal jail and cannot be probated or
21 suspended. In addition, the Director of Public Safety shall
22 revoke the driving privilege or driver's license of the person
23 convicted for a period of three years and the offender shall
24 be required to have an ignition interlock device installed and
25 operating on the designated motor vehicle driven by the
26 offender for a period of three years from the date of issuance
27 of a driver's license indicating that the person's driving

1 privileges are subject to the condition of the installation
2 and use of a certified ignition interlock device on a motor
3 vehicle.

4 "(h) On a fourth or subsequent conviction, a person
5 convicted of violating this section shall be guilty of a Class
6 C felony and punished by a fine of not less than four thousand
7 one hundred dollars (\$4,100) nor more than ten thousand one
8 hundred dollars (\$10,100) and by imprisonment of not less than
9 one year and one day nor more than 10 years. Any term of
10 imprisonment may include hard labor for the county or state,
11 and where imprisonment does not exceed three years confinement
12 may be in the county jail. Where imprisonment does not exceed
13 one year and one day, confinement shall be in the county jail.
14 The minimum sentence shall include a term of imprisonment for
15 at least one year and one day, provided, however, that there
16 shall be a minimum mandatory sentence of 10 days which shall
17 be served in the county jail. The remainder of the sentence
18 may be suspended or probated, but only if as a condition of
19 probation the defendant enrolls and successfully completes a
20 state certified chemical dependency program recommended by the
21 court referral officer and approved by the sentencing court.
22 Where probation is granted, the sentencing court may, in its
23 discretion, and where monitoring equipment is available, place
24 the defendant on house arrest under electronic surveillance
25 during the probationary term. In addition to the other
26 penalties authorized, the Director of Public Safety shall
27 revoke the driving privilege or driver's license of the person

1 convicted for a period of five years and the offender shall be
2 required to have an ignition interlock device installed and
3 operating on the designated motor vehicle driven by the
4 offender for a period of five years from the date of issuance
5 of a driver's license indicating that the person's driving
6 privileges are subject to the condition of the installation
7 and use of a certified ignition interlock device on a motor
8 vehicle.

9 The Alabama habitual felony offender law shall not
10 apply to a conviction of a felony pursuant to this subsection,
11 and a conviction of a felony pursuant to this subsection shall
12 not be a felony conviction for purposes of the enhancement of
13 punishment pursuant to Alabama's habitual felony offender law.

14 "(i) (1) When any person convicted of violating this
15 section is found to have had at least 0.15 percent or more by
16 weight of alcohol in his or her blood while operating or being
17 in actual physical control of a vehicle, he or she shall be
18 sentenced to at least double the minimum punishment that the
19 person would have received if he or she had had less than 0.15
20 percent by weight of alcohol in his or her blood. If the
21 adjudicated offense is a misdemeanor, the minimum punishment
22 shall be imprisonment for one year, all of which may be
23 suspended except as otherwise provided for in Section
24 32-5A-191(f) and Section 32-5A-191 (g). In addition, the
25 Director of Public Safety shall revoke the driving privileges
26 or driver's license of the person convicted for a period of
27 not less than one year.

1 "(2) In addition to the penalties in subdivision
2 (1), a judge may order the person to abstain from consuming
3 any alcoholic beverages and to wear a continuous alcohol
4 monitoring device for up to one year.

5 "(3) For the purposes of this subsection, the term
6 "continuous alcohol monitoring device" shall mean any device
7 used to automatically test a person's transdermal alcohol
8 concentration levels and monitors any attempt to tamper with
9 the device regardless of the location of the person who is
10 being monitored and to regularly transmit the data.

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

18 (k) In addition to the penalties provided herein,
19 any person convicted of violating this section shall be
20 referred to the court referral officer for evaluation and
21 referral to appropriate community resources. The defendant
22 shall, at a minimum, be required to complete a DUI or
23 substance abuse court referral program approved by the
24 Administrative Office of Courts and operated in accordance
25 with provisions of the Mandatory Treatment Act of 1990,
26 Sections 12-23-1 to 12-23-19, inclusive. The Department of
27 Public Safety shall not reissue a driver's license to a person

1 convicted under this section without receiving proof that the
2 defendant has successfully completed the required program.

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

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

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

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

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

26 "(o) Upon verification that a defendant arrested
27 pursuant to this section is currently on probation from

1 another court of this state as a result of a conviction for
2 any criminal offense, the prosecutor shall provide written or
3 oral notification of the defendant's subsequent arrest and
4 pending prosecution to the court in which the prior conviction
5 occurred.

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

12 "(q) A prior conviction within a five-year period
13 for driving under the influence of alcohol or drugs from this
14 state, a municipality within this state, or another state or
15 territory or a municipality of another state or territory
16 shall be considered by a court for imposing a sentence
17 pursuant to this section.

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

1 unless such action would impose an undue hardship to any
2 individual, not including the repeat offender, who is
3 completely dependent on the motor vehicle for the necessities
4 of life, including any family member of the repeat offender
5 and any co-owner of the vehicle or, in the case of a repeat
6 offender, if the repeat offender has a functioning ignition
7 interlock device installed on the designated vehicle for the
8 duration of the offender's driver's license suspension period.

9 "(s) Any person ordered by the court to have an
10 ignition interlock device installed on a designated vehicle
11 shall pay to the court, during the first four months his or
12 her license is suspended, seventy-five dollars (\$75) per
13 month, which shall be divided as follows:

14 "(1) Forty percent to the Alabama Interlock Indigent
15 Fund.

16 "(2) Twenty-five percent to the court of
17 jurisdiction.

18 "(3) Twenty percent to the Department of Public
19 Safety.

20 "(4) Fifteen percent to the district attorney of
21 jurisdiction.

22 "(t) The defendant shall designate the vehicle to be
23 used by identifying the vehicle by the vehicle identification
24 number to the court.

25 "(u) (1) Any person who is required to comply with
26 the ignition interlock provisions of this section as a
27 condition of restoration or reinstatement of his or her

1 driver's license, shall only operate the designated vehicle
2 equipped with a functioning ignition interlock device for the
3 period of time consistent with the offense for which he or she
4 was convicted as provided for in this section.

5 "(2) The duration of the time an ignition interlock
6 device is required by this section shall be doubled if the
7 offender refused the prescribed chemical test for
8 intoxication, or if the offender's blood alcohol concentration
9 was 0.15 grams percent or greater.

10 "(v) (1) The Department of Public Safety may set a
11 fee of not more than one hundred fifty dollars (\$150) for the
12 issuance of a driver's license indicating that the person's
13 driving privileges are subject to the condition of the
14 installation and use of a certified ignition interlock device
15 on a motor vehicle. Fifteen percent of the fee shall be
16 distributed to the general fund of the county where the person
17 was convicted to be utilized for law enforcement purposes. In
18 addition, at the end of the time the person's driving
19 privileges are subject to the above conditions, the department
20 shall set a fee of not more than seventy-five dollars (\$75) to
21 reissue a regular driver's license. The fee shall be deposited
22 as provided in Sections 32-6-5, 32-6-6, and 32-6-6.1.

23 "(2) The defendant shall provide proof of
24 installation of an approved ignition interlock device to the
25 Department of Public Safety as a condition of the issuance of
26 a restricted driver's license.

1 "(3) Any ignition interlock driving violation
2 committed by the offender during the mandated ignition
3 interlock period shall extend the duration of ignition
4 interlock use for six months from the date of violation.
5 Ignition interlock driving violations include any of the
6 following:

7 "a. A breath sample at or above a minimum blood
8 alcohol concentration level of 0.02 recorded more than four
9 times during the monthly reporting period.

10 "b. Any tampering, circumvention, or bypassing of
11 the ignition interlock device, or attempt thereof.

12 "c. Failure to comply with the servicing or
13 calibration requirements of the ignition interlock device
14 every 30 days.

15 "(w) Nothing in this section and Section 32-5A-191.4
16 shall require an employer to install an ignition interlock
17 device in a vehicle owned or operated by the employer for use
18 by an employee required to use the device as a condition of
19 driving pursuant to this section and Section 32-5A-191.4."

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

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