

1 SB185
2 203524-1
3 By Senators Orr, Albritton, Shelnutt, Butler, Melson and Allen
4 RFD: Judiciary
5 First Read: 13-FEB-20

8 SYNOPSIS: Under current law, an expert witness may
9 testify in the form of an opinion or otherwise.

10 This bill would provide additional
11 circumstances in which an expert witness may give
12 expert testimony.

13 Under current law, any person who operates a
14 motor vehicle on the public highways of this state
15 is deemed to have given consent to a chemical test
16 of his or her blood, breath, or urine to determine
17 the alcoholic content of his or her blood.

18 This bill would also provide that a chemical
19 test may be used to determine whether a person was
20 driving under the influence.

21 Under current law, only a physician, a
22 registered nurse, or other qualifying person may
23 withdraw blood for a chemical test of a person's
24 blood.

25 This bill would provide additional persons
26 who would be allowed to withdraw blood for a
27 chemical test of a person's blood.

1 This bill would provide that a witness may
2 give testimony solely on the issue of a driver's
3 impairment based on the results of a horizontal
4 gaze nystagmus test.

5 This bill would make nonsubstantive,
6 technical revisions to update the existing code
7 language to current style.

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

21 The purpose or effect of this bill would be
22 to require a new or increased expenditure of local
23 funds within the meaning of the amendment.
24 However, the bill does not require approval of a
25 local governmental entity or enactment by a 2/3
26 vote to become effective because it comes within

1 one of the specified exceptions contained in the
2 amendment.

3
4 A BILL
5 TO BE ENTITLED
6 AN ACT

7
8 Relating to driver's license, to amend Sections
9 12-21-160, 32-5-192, 32-5-200, 32-5A-194, 32-5A-300,
10 32-5A-301, 32-5A-302, 32-5A-303, 32-5A-304, 32-5A-306,
11 32-5A-307, 32-5A-308, and 32-6-49.13, Code of Alabama 1975, to
12 provide additional circumstances in which an expert witness
13 may give expert testimony; to provide for additional chemical
14 tests that may be used to determine if a person was driving
15 under the influence; to provide for additional persons who are
16 qualified to withdraw a person's blood for a chemical test; to
17 provide that a witness may provide testimony on the results of
18 a horizontal gaze nystagmus test; to make nonsubstantive,
19 technical revisions to update the existing code language to
20 current style; and in connection therewith would have as its
21 purpose or effect the requirement of a new or increased
22 expenditure of local funds within the meaning of Amendment 621
23 of the Constitution of Alabama of 1901, now appearing as
24 Section 111.05 of the Official Recompilation of the
25 Constitution of Alabama of 1901, as amended.
26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 12-21-160, 32-5-192, 32-5-200,
2 32-5A-194, 32-5A-300, 32-5A-301, 32-5A-302, 32-5A-303,
3 32-5A-304, 32-5A-306, 32-5A-307, 32-5A-308, and 32-6-49.13,
4 Code of Alabama 1975, are amended to read as follows:

5 "§12-21-160.

6 "(a) Generally. If scientific, technical, or other
7 specialized knowledge will assist the trier of fact to
8 understand the evidence or to determine a fact in issue, a
9 witness qualified as an expert by knowledge, skill,
10 experience, training, or education, may testify thereto in the
11 form of an opinion or otherwise.

12 "(b) Scientific evidence. In addition to
13 requirements set forth in subsection (a), expert testimony
14 based on a scientific theory, principle, methodology, or
15 procedure is only admissible if all of the following occurs:

16 "(1) The testimony is based on sufficient facts or
17 data~~7~~.

18 "(2) The testimony is the product of reliable
19 principles and methods~~7~~and.

20 "(3) The witness has applied the principles and
21 methods reliably to the facts of the case.

22 "Notwithstanding any other provision of law, a
23 law enforcement witness may give expert testimony solely on
24 the issue of impairment, and not on the issue of specific
25 alcohol or drug concentration levels, relating to whether a
26 person was under the influence of one or more impairing
27 substances, and the category of the impairing substance, if

1 the witness holds a current certification as a Drug
2 Recognition Expert at the time of the arrest, issued by the
3 Instructional Association of Chiefs of Police, at the time of
4 the arrest.

5 ~~"(c)~~ (d) Nothing in this section shall modify,
6 amend, or supersede any provisions of the Alabama Medical
7 Liability Act of 1987 and the Alabama Medical Liability Act of
8 1996, commencing with Section 6-5-540, et seq., or any
9 judicial interpretation thereof.

10 ~~"(d)~~ (e) This section shall apply to all civil state
11 court actions commenced on or after January 1, 2012. In
12 criminal actions, this section shall only apply to
13 non-juvenile felony proceedings ~~in which the~~ where the
14 defendant ~~that is the subject of the proceeding~~ was arrested
15 on the charge that is the subject of the proceeding on or
16 after January 1, 2012. This section shall not apply to
17 domestic relations, child support, juvenile, or probate cases.

18 ~~"(e)~~ (f) The provisions of this section, where
19 inconsistent with any Alabama Rule of Civil Procedure, Alabama
20 Rule of Criminal Procedure, l or Alabama Rule of Evidence,
21 including, but not limited to, Ala. R. Evid. 702, shall
22 supersede ~~such the~~ the rule or parts of rules.

23 "§32-5-192.

24 "(a) (1) Any person who operates a motor vehicle ~~upon~~
25 on the public highways of this state shall be deemed to have
26 given ~~his~~ consent, subject to ~~the provisions of~~ this division,
27 to a chemical test or tests of his or her blood, breath, l or

1 ~~urine~~ oral fluid for the purpose of determining the ~~alcoholic~~
2 content of ~~his blood~~ any impairing substance or substances
3 within a person's system, if lawfully arrested for any offense
4 arising out of acts alleged to have been committed while the
5 person was driving a motor vehicle on the public highways of
6 this state ~~while under the influence of intoxicating liquor~~ in
7 violation of Section 32-5A-191.

8 "(2) The test or tests shall be administered at the
9 direction of a law enforcement officer having reasonable
10 grounds to believe that the person ~~to have been~~ was in
11 violation of Section 32-5A-191, while driving a motor vehicle
12 upon on the public highways of this state ~~while under the~~
13 ~~influence of intoxicating liquor.~~

14 "(3) The law enforcement agency ~~by which such~~ that
15 employs the officer ~~is employed~~ shall designate which ~~of the~~
16 ~~aforsaid tests~~ test or tests shall be administered. ~~Such~~ The
17 person shall be told that his or her failure to submit to ~~such~~
18 a chemical test or tests will result in the suspension of his
19 or her privilege to operate a motor vehicle for a period
20 minimum of 90 days; ~~provided if such.~~ If the person objects to
21 a blood test, the law enforcement agency shall designate that
22 one of the other ~~aforsaid~~ tests be administered.

23 "(b) Any person who is dead, unconscious, or who is
24 otherwise in a condition rendering him or her incapable of
25 refusal, shall be deemed not to have withdrawn the consent
26 provided by subsection (a) ~~of this section~~ and the test or

1 tests may be administered, subject to ~~the provisions of this~~
2 division.

3 "(c) (1) If a person under arrest refuses upon the
4 request of a law enforcement officer to submit to a chemical
5 test or tests designated by the law enforcement agency as
6 provided in subsection (a) ~~of this section~~, none shall be
7 given, ~~but the Director of Public Safety~~ unless a court order
8 has been obtained ordering the person to submit to a chemical
9 test or tests.

10 "(2) The secretary, upon the receipt of a sworn
11 report of the law enforcement officer that he or she had
12 reasonable grounds to believe the arrested person had been
13 driving a motor vehicle upon the public highways of this state
14 ~~while under the influence of intoxicating liquor~~ in violation
15 of Section 32-5A-191 and that the person ~~had~~ refused to submit
16 to the test upon the request of the law enforcement officer,
17 ~~shall, on the first refusal, suspend his license or permit to~~
18 ~~drive, or the privilege of driving a motor vehicle on the~~
19 ~~highways of this state given to a nonresident; or if the~~
20 ~~person is a resident without a license or permit to operate a~~
21 ~~motor vehicle in this state, the director shall deny to the~~
22 ~~person the issuance of a license or permit, for a period of 90~~
23 ~~days, subject to review as hereinafter provided. For a second~~
24 ~~or subsequent refusal of such test within a five-year period,~~
25 ~~the director, upon said receipt of a sworn report, shall~~
26 ~~suspend his license or permit to drive, or the privilege of~~
27 ~~driving a motor vehicle on the highways of this state given to~~

1 ~~a nonresident for a period of one year; or if the person is a~~
2 ~~resident without a license or permit to operate a motor~~
3 ~~vehicle in this state, the director shall deny to the person~~
4 ~~the issuance of a license or permit, for a period of one year~~
5 ~~subject to review as hereinafter provided~~ suspend the driving
6 privilege as defined in Section 32-5-191 as provided in
7 Section 32-5A-304.

8 "(3) ~~If such~~ the ~~person is acquitted on the charge~~
9 ~~of driving a motor vehicle upon the highways of this state~~
10 ~~while under the influence of intoxicating liquor, then in that~~
11 ~~event the Director of Public Safety~~ of violating Section
12 32-5A-191, the secretary may, in his or her discretion, may
13 ~~reduce said~~ the period of suspension.

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

1 shall ~~cover the issues of whether~~ determine all of the
2 following:

3 "a. Whether a law enforcement officer had reasonable
4 grounds to believe the person had been driving a motor vehicle
5 upon the public highways of this state ~~while under the~~
6 ~~influence of intoxicating liquor,~~ whether in violation of
7 Section 32-5A-191.

8 "b. Whether the person was placed under arrest, ~~and~~
9 ~~whether.~~

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

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

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

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

1 manner ~~and under the same conditions~~ as is provided in Section
2 ~~32-6-16 in the cases of suspensions and denials~~ Section
3 32-5A-307.

4 "(f) ~~When it has been finally determined under the~~
5 ~~procedures of this section~~ Upon a determination that a
6 nonresident's privilege to operate a motor vehicle in this
7 state has been suspended the ~~director~~ secretary shall ~~give~~
8 ~~information provide,~~ in writing ~~of,~~ the action taken by this
9 state to the motor vehicle administrator of the state of the
10 person's residence and ~~of~~ to any state in which he or she has
11 a license.

12 "§32-5-200.

13 "(a) Any person who operates a motor vehicle on the
14 public highways of this state who is involved in ~~an accident~~ a
15 crash that results in death or a serious physical injury to
16 any person shall be deemed to have given consent to a chemical
17 test or tests of his or her blood for the purpose of
18 determining the alcoholic content of his or her blood or the
19 presence of ~~amphetamines, opiates, or cannabis~~ any other
20 impairing substance. The test or tests shall be administered
21 at the direction of a law enforcement officer having
22 reasonable grounds to believe that the person, while driving a
23 motor vehicle on the public highways of this state, was under
24 the influence of alcohol, ~~amphetamines, opiates, or cannabis~~
25 or any other impairing substance. The person shall be informed
26 by the law enforcement officer who is investigating the
27 ~~accident~~ crash that failure to submit to a test will result in

1 the suspension of his or her privilege to operate a motor
2 vehicle for a period of two years.

3 "(b) For purposes of this section, the term "serious
4 physical injury" means physical injury ~~which~~ that creates a
5 substantial risk of death, or which causes serious and
6 protracted disfigurement, protracted impairment of health, or
7 protracted loss or impairment of the function of any bodily
8 organ.

9 "(c) Any person who is dead, unconscious, or who is
10 otherwise in a condition in which they are incapable of
11 refusal, shall be deemed not to have withdrawn the consent
12 provided by subsection (a).

13 "(d) If a person refuses to submit to a chemical
14 test or tests, none shall be given, unless a court order has
15 been obtained ordering the person to submit to a chemical test
16 or tests. If the person is found not to have been at fault in
17 causing the ~~accident~~ crash, the ~~Director of Public Safety~~
18 secretary may reduce the period of suspension.

19 "~~(e)~~ (e) (1) Upon suspending the license or permit to
20 drive or the privilege of driving a motor vehicle on the
21 highways of this state that is given to a nonresident or any
22 person, or upon determining that the issuance of a license or
23 permit shall be denied to the person, the ~~Director of Public~~
24 ~~Safety~~ secretary, or his or her authorized agent, shall within
25 three days of suspension notify the person in writing. Upon a
26 request filed by the person within five days from the date of
27 the notice of suspension or denial, the ~~director~~ secretary

1 shall schedule a hearing with notice of the hearing to be
2 provided by certified mail to the person stating the date,
3 time, place, and scope of the hearing. The scope of the
4 hearing shall ~~pertain to~~ determine all of the following
5 ~~issues~~:

6 ~~"(1)~~ a. Whether a law enforcement officer had
7 reasonable grounds to believe the person had been driving a
8 motor vehicle on the public highways of this state while under
9 the influence of the substances enumerated in subsection (a).

10 ~~"(2)~~ b. Whether the person was at fault in causing
11 the accident.

12 ~~"(3)~~ c. Whether the person refused to submit to the
13 test upon request of a law enforcement officer.

14 ~~"(4)~~ (2) Whether the person was informed that his or
15 her privilege to drive would be suspended or denied if he or
16 she refused to submit to the test shall not be an issue.

17 "(f) If the suspension or determination that there
18 should be a denial or issuance is sustained by the ~~director~~
19 secretary, or his or her authorized agent, the person whose
20 license or permit to drive or a nonresident operating
21 privilege has been suspended, or to whom a license or permit
22 is denied, shall have the right to file a petition to review
23 the final order, suspension, or denial within 30 days after
24 the entry of the final order of suspension or denial by the
25 ~~director~~ secretary in the appropriate court to review the
26 final order of suspension.

1 "~~g) When it has been finally determined under the~~
2 ~~procedures of this section~~ Upon a determination that the
3 ~~privilege of a nonresident~~ a nonresident's privilege to
4 operate a motor vehicle in this state has been suspended, the
5 ~~director~~ secretary shall ~~give information~~ provide, in writing
6 ~~of,~~ the action taken to the motor vehicle administrator of the
7 state of ~~the residence of the person~~ person's residence and to
8 any state in which the person has a license.

9 "§32-5A-194.

10 "(a) Upon the trial of any civil, criminal, or
11 quasi-criminal action or proceeding arising out of acts
12 alleged to have been committed by any person while driving or
13 in actual physical control of a motor vehicle while under the
14 influence ~~of alcohol or controlled substance,~~ evidence of the
15 amount of alcohol ~~or,~~ controlled substance, or other impairing
16 substance in a person's blood at the alleged time, as
17 determined by a chemical analysis of the person's blood,
18 ~~urine,~~ breath, oral fluid, or other bodily substance, or any
19 combination thereof, shall be admissible. Where ~~such~~ a
20 chemical test ~~is~~ or tests are made, the following provisions
21 shall apply:

22 "(1) Chemical analyses of the person's blood, ~~urine,~~
23 breath, oral fluid, or other bodily substance to be considered
24 valid ~~under the provisions of this section~~ shall have been
25 performed according to methods approved by the Department of
26 Forensic Sciences and by an individual possessing a valid
27 permit issued by the Department of Forensic Sciences ~~for this~~

1 ~~purpose~~. The court trying the case may take judicial notice of
2 the methods approved by the Department of Forensic Sciences.
3 The Department of Forensic Sciences ~~is authorized to~~ may
4 approve satisfactory techniques or methods, to ascertain the
5 qualifications and competence of individuals to conduct ~~such~~
6 the analyses, and to issue permits which shall be subject to
7 termination or revocation at the discretion of the Department
8 of Forensic Sciences. The Department of Forensic Sciences
9 shall approve permits required in this section only for
10 employees of state, county, municipal, and federal law
11 enforcement agencies, and for laboratory personnel employed by
12 the Department of Forensic Sciences.

13 "(2) When a person shall submit to a blood test at
14 the direction of a law enforcement officer ~~under the~~
15 ~~provisions of~~ pursuant to Section 32-5-192, only a physician
16 ~~or~~ a registered nurse, a paramedic, ~~or~~ other qualified
17 person, may withdraw blood for the purpose of determining the
18 alcoholic content ~~therein~~ or the presence of other impairing
19 substances. This limitation shall not apply to the taking of
20 breath or oral fluid ~~urine specimens~~. ~~If the test given under~~
21 ~~Section 32-5-192 is a chemical test of urine, the person~~
22 ~~tested shall be given such privacy in the taking of the urine~~
23 ~~specimen as will insure the accuracy of the specimen and, at~~
24 ~~the same time, maintain the dignity of the individual~~
25 ~~involved~~.

26 "(3) The person tested may at his or her own expense
27 have a physician, ~~or~~ a qualified technician, registered nurse,

1 or other qualified person of his or her own choosing
2 administer a chemical test or tests in addition to any
3 administered at the discretion of a law enforcement officer.
4 The failure or inability to obtain an additional test by a
5 person shall not preclude the admission of evidence relating
6 to the test or tests taken at the direction of a law
7 enforcement officer.

8 "(4) Upon the written request of the person who
9 shall submit to a chemical test or tests at the request of a
10 law enforcement officer, full information concerning the test
11 or tests shall be made available to him or her or his or her
12 attorney.

13 "(5) Percent by weight of alcohol in the blood shall
14 be based upon grams of alcohol per 100 cubic centimeters of
15 blood or grams of alcohol per 210 liters of breath.

16 "(b) Upon the trial of any civil, criminal, or
17 quasi-criminal action or proceeding arising out of acts
18 alleged to have been committed by any person while driving or
19 in actual physical control of a motor vehicle while under the
20 influence of alcohol, the amount of alcohol in the person's
21 blood at the time alleged as shown by chemical analysis of the
22 person's blood, ~~urine, or~~ breath, ~~or other bodily substance~~
23 shall give rise to all of the following presumptions:

24 "(1) If there were at that time 0.05 percent or less
25 by weight of alcohol in the person's blood, it shall be
26 presumed that the person was not under the influence of
27 alcohol unless the person was operating a motor vehicle in

1 performance of his or her duties as a school bus driver or day
2 care driver at that time or was under the age of 21 years at
3 that time.

4 "(2) If there were at the time in excess of 0.05
5 percent but less than 0.08 percent by weight of alcohol in the
6 person's blood, ~~such~~ this fact shall not give rise to any
7 presumption that the person was or was not under the influence
8 of alcohol, but ~~such~~ this fact may be considered with other
9 competent evidence in determining whether the person was under
10 the influence of alcohol unless the person was operating a
11 motor vehicle in performance of his or her duties as a school
12 bus driver or day care driver at that time or was under the
13 age of 21 years at that time.

14 "(3) If there were at that time 0.08 percent or more
15 by weight of alcohol in the person's blood, or greater than
16 .02 percent if the person was operating a motor vehicle in
17 performance of his or her duties as a school bus driver or day
18 care driver at that time or was under the age of 21 years at
19 that time, it shall be presumed that the person was under the
20 influence of alcohol.

21 "~~(4) The foregoing provisions of this subsection~~
22 Nothing in this section shall ~~not~~ be construed as limiting the
23 introduction of any other competent evidence ~~bearing upon~~
24 relating to the question of whether the person was under the
25 influence of alcohol.

26 "(c) If a person under arrest refuses to submit to a
27 chemical test ~~under the provisions of~~ or tests pursuant to

1 Section 32-5-192, evidence of refusal shall be admissible in
2 any civil, criminal, or quasi-criminal action or proceeding
3 arising out of acts alleged to have been committed while the
4 person was driving or in actual physical control of a motor
5 vehicle while under the influence of ~~alcohol or controlled~~
6 ~~substance~~.

7 "(d) No physician, registered nurse, ~~or~~ paramedic,
8 duly licensed chemical laboratory technologist or clinical
9 laboratory technician, fire department, rescue squad, private
10 ambulance company, or medical facility shall incur any civil
11 or criminal liability as a result of the proper administering
12 of a blood test when requested in writing by a law enforcement
13 officer to administer such a test.

14 "§32-6-49.13.

15 "(a) A person who drives a commercial motor vehicle
16 within this state is deemed to have given consent, subject to
17 provisions of Section 32-5-192, to take a test or tests of
18 that person's blood, breath, or ~~urine~~ oral fluid, or any
19 combination thereof, for the purpose of determining that
20 person's alcohol concentration, ~~or~~ the presence of other
21 drugs, or any other impairing substance.

22 "(b) (1) A test or tests shall be administered at the
23 direction of a law enforcement officer, who after stopping or
24 detaining the commercial motor vehicle driver, has probable
25 cause to believe that driver was driving a commercial motor
26 vehicle while having ~~alcohol or drugs~~ any impairing substance
27 in his or her system. The law enforcement officer shall test

1 the driver at the scene by using a field breathalyzer or other
2 approved device, technique, or procedure approved by the
3 Department of Forensic Sciences, or transport the driver to an
4 appropriate facility where a chemical test or tests by an
5 approved method shall be administered either by the officer or
6 at his or her direction, or both.

7 "(2) A test or tests shall be administered at the
8 direction of a law enforcement officer to all commercial motor
9 vehicle drivers who are involved in any vehicular accident
10 which results in death or physical injury requiring
11 hospitalization or emergency medical treatment.

12 "(c) A person requested to submit to a test or tests
13 as provided in subsection (a) ~~above~~ must be warned by the law
14 enforcement officer requesting the test or tests, that a
15 refusal to submit to the test or tests will result in that
16 person being immediately placed out of service for a period of
17 24 hours and being disqualified from operating a commercial
18 motor vehicle for a period of not less than two years under
19 Section 32-6-49.12.

20 "(d) If the person refuses testing, or submits to a
21 test which discloses an alcohol concentration of 0.04 or more,
22 the law enforcement officer shall submit a sworn report to the
23 ~~department~~ agency certifying that the test was requested
24 pursuant to subsection (b) and that the person refused to
25 submit to testing, or submitted to a test which disclosed an
26 alcohol concentration of 0.04 or more.

1 "(e) Upon receipt of the sworn report of a law
2 enforcement officer submitted under subsection (d), the
3 ~~department~~ agency shall disqualify the driver from driving a
4 commercial motor vehicle for a period of not less than two
5 years under Section 32-6-49.12. This penalty shall be in
6 addition to and cumulative of any other penalties imposed upon
7 the driver under any other existing laws and shall run
8 consecutively with any penalties for other offenses.

9 "(f) Upon suspending the license or permit to drive
10 or the privilege of driving a motor vehicle on the highways of
11 this state that is given to a nonresident or any person, or
12 upon determining that the issuance of a license or permit
13 shall be denied to the person, the ~~director~~ secretary or his
14 or her authorized agent, shall within three days of suspension
15 notify the person in writing. Upon a request filed by the
16 person within five days from the date of the notice of
17 suspension or denial, the ~~director~~ secretary shall schedule a
18 hearing with notice of the hearing to be provided by certified
19 mail to the person stating the date, time, place, and scope of
20 the hearing. The scope of the hearing shall pertain to all of
21 the following ~~issues~~:

22 "(1) Whether the law enforcement officer had
23 reasonable grounds to believe the person had been driving a
24 motor vehicle on the public highways of this state while under
25 the influence of the substances enumerated in subsection (a).

26 "(2) Whether the person refused to submit to the
27 test upon request of a law enforcement officer.

1 "(3) Whether the person was informed that his or her
2 privilege to drive would be suspended or denied if he or she
3 refused to submit to the test.

4 "(g) If the suspension or determination that there
5 should be a denial of issuance is sustained by the ~~director~~
6 secretary, or his or her authorized agent, the person whose
7 license or permit to drive or a nonresident operating
8 privilege has been suspended, or to whom a license or permit
9 is denied, shall have the right to file a petition to review
10 the final order, suspension, or denial within 30 days after
11 the entry of the final order of suspension or denial by the
12 ~~director~~ secretary in the appropriate court to review the
13 final order of suspension.

14 "~~When it has been finally determined under the~~
15 ~~procedures of this section~~ Upon a determination that ~~the~~
16 ~~privilege of a nonresident~~ a nonresident's privilege to
17 operate a motor vehicle in this state has been suspended, the
18 ~~director~~ secretary shall ~~give information~~ provide in writing
19 ~~of~~ the action taken to the motor vehicle administrator of the
20 state of ~~the residence of the person~~ person's residence and to
21 any state in which the person has a license."

22 "§32-5A-300.

23 "(a) The ~~director~~ secretary, or his or her agent,
24 shall suspend the driving privilege of any person upon a
25 determination that the person drove or was in actual physical
26 control of a motor vehicle while the amount of alcohol in the
27 blood of the person was above the legal limit.

1 "(b) The ~~director~~ secretary, or his or her agent,
2 shall suspend the driving privilege of any person upon a
3 determination that the person refused a test to determine the
4 ~~amount of drug or alcohol content~~ in the blood of the person
5 as provided in Section 32-5-192.

6 "(c) The ~~director~~ secretary, or his or her agent,
7 shall make a determination pursuant to subsections (a) and (b)
8 based on the report of a law enforcement officer required in
9 Section 32-5A-301, and this determination shall be final
10 unless an administrative review is requested under Section
11 32-5A-306 or a hearing is held under Section 32-5A-307.

12 "(d) The determination of these facts by the
13 ~~director~~ secretary, or his or her agent, is independent of the
14 determination of the same or similar facts in the adjudication
15 of any criminal charges arising out of the same occurrence.
16 ~~The disposition of these criminal charges shall not affect any~~
17 ~~suspension under this section.~~

18 "§32-5A-301.

19 "(a) A law enforcement officer who arrests any
20 person for a violation of Section 32-5A-191 shall within five
21 days after the day of arrest, excluding weekends and state
22 holidays, hand deliver, mail, or submit electronically to the
23 ~~department~~ agency a sworn report of all information relevant
24 to the enforcement action, including information which
25 adequately identifies the arrested person, a statement of the
26 officer's grounds for belief that the person violated Section
27 32-5A-191, the results of any chemical test which was

1 conducted, a statement if the person refused to submit to a
2 test, and a copy of the citation or complaint filed with the
3 court.

4 "(b) The report required by this section shall be
5 made on forms supplied by the ~~department~~ agency or in a manner
6 specified by regulations of the ~~department~~ agency.

7 "(c) The ~~department~~ agency shall not take action on
8 any report not sworn to and not mailed and postmarked or
9 received by the ~~department~~ agency within five days after the
10 day of arrest, excluding weekends and state holidays.

11 "§32-5A-302.

12 "(a) Upon receipt of the report of the law
13 enforcement officer, the ~~director~~ secretary, or his or her
14 agent, shall make the determination described in Section
15 32-5A-300. If the ~~director~~ secretary, or his or her agent,
16 determines that the person is subject to driving privilege
17 suspension, the ~~director~~ secretary, or the agent, shall issue
18 a notice of the suspension.

19 "(b) The notice of suspension shall be mailed to the
20 person at the last known address shown on the ~~department's~~
21 agency's record. The notice is deemed received three days
22 after mailing.

23 "(c) The notice of suspension shall clearly specify
24 the reason and statutory grounds for suspension, the effective
25 date of the suspension, the right of the person to request an
26 administrative review and a hearing, the procedure for
27 requesting an administrative review and a hearing, and the

1 date by which a request for an administrative review is
2 required to be made in order to receive a determination prior
3 to the effective date of the suspension.

4 "(d) If the ~~director~~ secretary, or his or her agent,
5 determines that the person is not subject to driving privilege
6 suspension, the ~~director~~ secretary, or his or her agent, shall
7 notify the person of the determination.

8 "§32-5A-303.

9 "(a) If the chemical test results for a person
10 charged with a violation of Section 32-5A-191 show 0.08
11 percent or more by weight of alcohol in the blood of the
12 person, or the person refuses a test, the officer, acting on
13 behalf of the ~~director~~ secretary, shall serve a notice of
14 intended suspension personally on the arrested person.

15 "(b) When serving a notice of intended suspension,
16 the law enforcement officer shall take possession of any
17 driver's license issued by this state which is held by the
18 person. When taking possession of a valid driver's license
19 issued by this state, the officer, acting on behalf of the
20 ~~director~~ secretary, shall issue a temporary driving permit
21 which is valid for 30 days after the date of issuance.

22 "(c) A copy of the completed notice of intended
23 suspension form, a copy of any completed temporary driving
24 permit form, and any driver's license taken into possession
25 under this section shall be forwarded within five days to the
26 ~~department~~ secretary by the officer.

1 "(d) The ~~department~~ agency shall provide forms for
2 notice of intended suspension and for temporary driving
3 permits to law enforcement agencies.

4 "§32-5A-304.

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

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

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

16 "(2) One year if the driving record of a person
17 shows one prior alcohol or drug-related enforcement contact
18 during the immediately preceding five years.

19 "(3) Three years if the driving record of a person
20 shows two or three alcohol or drug-related enforcement
21 contacts during the immediately preceding five years.

22 "(4) Five years if the driving record of a person
23 shows four or more alcohol or drug-related enforcement
24 contacts during the immediately preceding five years.

25 "(5) For purposes of this section, "alcohol or
26 drug-related enforcement contacts" shall include all
27 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~~ secretary
22 shall rescind the suspension order and remove the
23 administrative suspension from the person's driving record,
24 except for those persons holding a commercial driver license,
25 a commercial learner license, or a person operating a
26 commercial motor vehicle.

27 "§32-5A-306.

1 "(a) Any person who has received a notice of
2 suspension or a notice of intended suspension under this
3 article may request an administrative review. The request may
4 be accompanied by a sworn statement or statements and any
5 other relevant evidence which the person wants the ~~director~~
6 secretary, or his or her agent, to consider in reviewing the
7 determination made pursuant to Sections 32-5A-300 and
8 32-5A-302.

9 "(b) When a request for an administrative review is
10 made, the ~~director~~ secretary, or his or her agent, shall
11 review the determination made pursuant to Sections 32-5A-300
12 and 32-5A-302. In the review, the ~~director~~ secretary, or his
13 or her agent, shall give consideration to any relevant sworn
14 statement or other evidence accompanying the request for the
15 review, and to the sworn statement of the law enforcement
16 officer required by Section 32-5A-301. If the ~~director~~
17 secretary, or his or her agent, determines, by a preponderance
18 of the evidence, that the person drove or was in actual
19 physical control of a motor vehicle with 0.08 percent or more
20 by weight of alcohol in the blood, or the person refused the
21 test, the ~~director~~ secretary, or his or her agent, shall
22 sustain the order of suspension or suspend the driver license
23 or driving privilege of the person if no order of suspension
24 has been issued. If the evidence does not support such a
25 determination, the ~~director~~ secretary, or his or her agent,
26 shall rescind the order of suspension or take no suspension
27 action if an order of suspension has not been issued. The

1 determination by the ~~director~~ secretary, or his or her agent,
2 upon administrative review is final unless a hearing is
3 requested under Section 32-5A-307.

4 "(c) The ~~director~~ secretary, or his or her agent,
5 shall make a determination upon administrative review prior to
6 the effective date of the suspension order if the request for
7 review is received by the ~~department~~ agency within 10 days
8 following service of the notice of intended suspension. Where
9 the request for administrative review is received by the
10 ~~department~~ agency more than 10 days following service of the
11 notice of intended suspension, the ~~director~~ secretary, or his
12 or her agent, shall make the determination within 30 days
13 following the receipt of the request for review.

14 "(d) A request for administrative review shall not
15 stay the driving privilege suspension or revocation. If the
16 ~~director~~ secretary, or his or her agent, is unable to make a
17 determination within the time limits specified in subsection
18 (c), the ~~director~~ secretary or agent shall stay the suspension
19 pending the determination.

20 "(e) The request for administrative review shall be
21 in writing and may be made by mail or in person to the
22 ~~Department of Public Safety~~ Alabama State Law Enforcement
23 Agency, Driver License Division, Montgomery, Alabama. A person
24 may request an administrative review at any time within 90
25 days of the notice of suspension under Section 32-5A-302 or
26 the notice of intended suspension under Section 32-5A-303.

1 "(f) A person may request and be granted a hearing
2 under Section 32-5A-307 without first requesting
3 administrative review under this section. An administrative
4 review is not available after a hearing is held.

5 "§32-5A-307.

6 "(a) Any person who has received a notice of
7 intended suspension pursuant to Section 32-5A-303 or a notice
8 of suspension pursuant to Section 32-5A-302 where no notice of
9 intended suspension was served may request an administrative
10 hearing. A request for an administrative hearing shall be in
11 writing and shall be hand delivered or mailed to the Alabama
12 ~~Department of Public Safety~~ State Law Enforcement Agency,
13 Driver License Division, in Montgomery, Alabama. The request
14 shall be received by the ~~department~~ agency or be mailed and
15 postmarked within 10 days of the notice of intended suspension
16 issued pursuant to Section 32-5A-303 or the notice of
17 suspension issued pursuant to Section 32-5A-302 where no
18 notice of intended suspension was served. Failure to request
19 an administrative hearing within 10 days shall constitute a
20 waiver of the person's right to an administrative hearing and
21 judicial review under this article. If the driver's license of
22 the person has not been previously surrendered, it shall be
23 surrendered at the hearing. A request for a hearing shall not
24 stay the driving privilege suspension.

25 "(b) The hearing shall be scheduled to be held as
26 quickly as practicable and not more than 30 days after the
27 filing of the request for a hearing. The hearing shall be held

1 at a location designated by the ~~director~~ secretary unless the
2 parties agree to a different location. The ~~department~~ agency
3 shall provide a written notice of the time and place of the
4 hearing to the party requesting the hearing at least five days
5 prior to the scheduled hearing, unless the parties agree to
6 waive this requirement.

7 "(c) The hearing shall be before the ~~Director of~~
8 ~~Public Safety~~ secretary or his or her duly authorized agent.
9 Upon the hearing, the ~~Director of Public Safety~~ secretary, or
10 his or her duly authorized agent, may administer oaths and may
11 issue subpoenas for the attendance of witnesses and the
12 production of relevant books and papers and may require a
13 re-examination of the licensee. Upon the hearing, the ~~Director~~
14 ~~of Public Safety~~ secretary, or his or her duly authorized
15 agent, shall make a final determination which either rescinds
16 the order of suspension or, for good cause appearing,
17 continues, modifies, or extends the suspension of the
18 licensee. If the hearing is conducted by a duly authorized
19 agent instead of by the ~~Director of Public Safety~~ personally
20 secretary, the determination of the ~~department~~ agency shall
21 not be final until approved by the ~~Director of Public Safety~~
22 secretary.

23 "(d) The sole issues at the hearing shall be whether
24 by a preponderance of the evidence the person drove or was in
25 actual physical control of a motor vehicle with 0.08 percent
26 or more by weight of alcohol in the blood, or whether the
27 person refused a test as provided in Section 32-5-192.

1 "(e) The decision of the ~~director~~ secretary shall be
2 rendered in writing, and shall be mailed to the person who
3 requested the hearing at their last known address on file with
4 the ~~department~~ agency.

5 "(f) If the person who requested the hearing fails
6 to appear without just cause, the right to a hearing shall be
7 waived.

8 "(g) The procedures set forth in this article shall
9 be the sole and exclusive manner to determine the
10 administration of this article. The Alabama Administrative
11 Procedure Act in Sections 41-22-1 to 41-22-27, inclusive,
12 shall not apply.

13 "§32-5A-308.

14 "Within 30 days of the issuance of the final
15 determination of the ~~department~~ agency following a hearing
16 under Section 32-5A-307, a person aggrieved by the
17 determination shall have the right to file a petition in the
18 circuit court of the county where the arrest was made for
19 judicial review. The appeal shall be taken by serving written
20 notice of the appeal upon the ~~director~~ secretary, which
21 service shall be made by delivering a copy of the notice to
22 the ~~director~~ secretary in Montgomery, Alabama, and filing the
23 original ~~thereof~~ with the clerk of the court to which the
24 appeal is taken. The court shall set the matter for hearing
25 upon 30 days' written notice to the ~~director~~ secretary. At the
26 hearing, the court may take testimony and examine the facts of
27 the case. After the hearing, the court may either reverse or

1 sustain the final determination of the ~~department~~ agency. The
2 filing of a petition for judicial review shall not stay the
3 suspension order."

4 Section 2. Notwithstanding any other provision of
5 law and for purposes of prosecutions under Section 32-5A-191,
6 a law enforcement witness may give testimony solely on the
7 issue of impairment, and not on the issue of specific alcohol
8 or drug concentration levels, based on the results of a
9 horizontal gaze nystagmus test when the test is administered
10 in accordance with the individual's training and administered
11 by an individual who has successfully completed training in
12 the horizontal gaze nystagmus test.

13 Section 3. Although this bill would have as its
14 purpose or effect the requirement of a new or increased
15 expenditure of local funds, the bill is excluded from further
16 requirements and application under Amendment 621, now
17 appearing as Section 111.05 of the Official Recompilation of
18 the Constitution of Alabama of 1901, as amended, because the
19 bill defines a new crime or amends the definition of an
20 existing crime.

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