

1 SB258
2 209341-2
3 By Senator Orr
4 RFD: Judiciary
5 First Read: 23-FEB-21

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3
4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. This act shall be known and may be cited
3 as the Danny Kendall Johnson Act.

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

8 "§32-5-192.

9 "(a) (1) Any person who operates a motor vehicle ~~upon~~
10 on the public highways of this state shall be deemed to have
11 given ~~his~~ consent, subject to ~~the provisions of~~ this division,
12 to a chemical test or tests of his or her blood, breath, or
13 ~~urine~~ oral fluid for the purpose of determining the ~~alcoholic~~
14 content of ~~his blood~~ any impairing substance or substances
15 within a person's system, if lawfully arrested for any offense
16 arising out of acts alleged to have been committed while the
17 person was driving a motor vehicle on the public highways of
18 this state ~~while under the influence of intoxicating liquor in~~
19 violation of Section 32-5A-191.

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

26 "(3) The law enforcement agency ~~by which such~~ that
27 employs the officer ~~is employed~~ shall designate which ~~of the~~

1 ~~aforsaid tests~~ test or tests shall be administered. ~~Such~~ The
2 person shall be told that his or her failure to submit to ~~such~~
3 a chemical test or tests will result in the suspension of his
4 or her privilege to operate a motor vehicle for a ~~period~~
5 minimum of 90 days; ~~provided if such.~~ If the person objects to
6 a blood test, the law enforcement agency shall designate that
7 one of the other ~~aforsaid~~ tests be administered.

8 "(b) Any person who is dead, unconscious, or who is
9 otherwise in a condition rendering him or her incapable of
10 refusal, shall be deemed not to have withdrawn the consent
11 provided by subsection (a) ~~of this section~~ and the test or
12 tests may be administered, subject to ~~the provisions of~~ this
13 division.

14 "(c) (1) If a person under arrest refuses upon the
15 request of a law enforcement officer to submit to a chemical
16 test or tests designated by the law enforcement agency as
17 provided in subsection (a) ~~of this section~~, none shall be
18 given, ~~but the Director of Public Safety~~ unless a court order
19 has been obtained ordering the person to submit to a chemical
20 test or tests.

21 "(2) The secretary, upon the receipt of a sworn
22 report of the law enforcement officer that he or she had
23 reasonable grounds to believe the arrested person had been
24 driving a motor vehicle upon the public highways of this state
25 ~~while under the influence of intoxicating liquor~~ in violation
26 of Section 32-5A-191 and that the person ~~had~~ refused to submit
27 to the test upon the request of the law enforcement officer,

1 shall, ~~on the first refusal, suspend his license or permit to~~
2 ~~drive, or the privilege of driving a motor vehicle on the~~
3 ~~highways of this state given to a nonresident; or if the~~
4 ~~person is a resident without a license or permit to operate a~~
5 ~~motor vehicle in this state, the director shall deny to the~~
6 ~~person the issuance of a license or permit, for a period of 90~~
7 ~~days, subject to review as hereinafter provided. For a second~~
8 ~~or subsequent refusal of such test within a five-year period,~~
9 ~~the director, upon said receipt of a sworn report, shall~~
10 ~~suspend his license or permit to drive, or the privilege of~~
11 ~~driving a motor vehicle on the highways of this state given to~~
12 ~~a nonresident for a period of one year; or if the person is a~~
13 ~~resident without a license or permit to operate a motor~~
14 ~~vehicle in this state, the director shall deny to the person~~
15 ~~the issuance of a license or permit, for a period of one year~~
16 ~~subject to review as hereinafter provided~~ suspend the driving
17 privilege as defined in Section 32-5-191 as provided in
18 Section 32-5A-304.

19 "(3) ~~If such~~ the ~~person is acquitted on the charge~~
20 ~~of driving a motor vehicle upon the highways of this state~~
21 ~~while under the influence of intoxicating liquor, then in that~~
22 ~~event the Director of Public Safety~~ of violating Section
23 32-5A-191, the secretary may, in his or her discretion, may
24 ~~reduce said~~ the period of suspension.

25 "(d) (1) ~~Upon suspending the license or permit to~~
26 ~~drive or the privilege of driving a motor vehicle on the~~
27 ~~highways of this state given to a nonresident or any person,~~

1 ~~or upon determining that the issuance of a license or permit~~
2 ~~shall be denied to the person, as hereinbefore in this section~~
3 ~~directed, the Director of Public Safety driving privilege, the~~
4 ~~secretary or his or her duly authorized agent shall~~
5 immediately notify the person in writing of the suspension and
6 upon ~~his~~ a request filed by the person, the secretary shall
7 ~~afford him an opportunity for~~ provide a hearing in the same
8 manner ~~and under the same conditions as is provided in Section~~
9 ~~32-6-16, for notification and hearings in the cases of~~
10 ~~suspension of licenses~~ Section 32-5A-307; except, that the
11 scope of ~~such a~~ the hearing for the purposes of this section
12 shall ~~cover the issues of whether~~ determine all of the
13 following:

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

19 "b. Whether the person was placed under arrest, ~~and~~
20 ~~whether.~~

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

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

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

4 "(e) If the suspension or determination that there
5 should be a denial of issuance is sustained by the ~~Director of~~
6 ~~Public Safety~~ secretary, or his or her authorized agent upon
7 ~~such~~ the hearing, the person whose ~~license or permit to drive~~
8 ~~or nonresident operating privilege has been suspended or to~~
9 ~~whom a license or permit is denied, under the provisions of~~
10 ~~this section,~~ driving privilege has been suspended shall have
11 the right to file a petition in the appropriate court to
12 review the final order of suspension or denial by the ~~director~~
13 ~~secretary,~~ or his or her duly authorized agent, in the same
14 ~~manner and under the same conditions as is provided in Section~~
15 ~~32-6-16 in the cases of suspensions and denials~~ 32-5A-307.

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

24 "§32-5-200.

25 "(a) Any person who operates a motor vehicle on the
26 public highways of this state who is involved in ~~an accident~~ a
27 crash that results in death or a serious physical injury to

1 any person shall be deemed to have given consent to a chemical
2 test or tests of his or her blood for the purpose of
3 determining the alcoholic content of his or her blood or the
4 presence of ~~amphetamines, opiates, or cannabis~~ any other
5 impairing substance. The test or tests shall be administered
6 at the direction of a law enforcement officer having
7 reasonable grounds to believe that the person, while driving a
8 motor vehicle on the public highways of this state, was under
9 the influence of alcohol, ~~amphetamines, opiates, or cannabis~~
10 or any other impairing substance. The person shall be informed
11 by the law enforcement officer who is investigating the
12 ~~accident~~ crash that failure to submit to a test will result in
13 the suspension of his or her privilege to operate a motor
14 vehicle for a period of two years.

15 "(b) For purposes of this section, the term "serious
16 physical injury" means physical injury ~~which~~ that creates a
17 substantial risk of death, or which causes serious and
18 protracted disfigurement, protracted impairment of health, or
19 protracted loss or impairment of the function of any bodily
20 organ.

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

25 "(d) If a person refuses to submit to a chemical
26 test or tests, none shall be given, unless a court order has
27 been obtained ordering the person to submit to a chemical test

1 or tests. If the person is found not to have been at fault in
2 causing the ~~accident~~ crash, the ~~Director of Public Safety~~
3 secretary may reduce the period of suspension.

4 "(e) (1) Upon suspending the license or permit to
5 drive or the privilege of driving a motor vehicle on the
6 highways of this state that is given to a nonresident or any
7 person, or upon determining that the issuance of a license or
8 permit shall be denied to the person, the ~~Director of Public~~
9 ~~Safety~~ secretary, or his or her authorized agent, shall within
10 three days of suspension notify the person in writing. Upon a
11 request filed by the person within five days from the date of
12 the notice of suspension or denial, the ~~director~~ secretary
13 shall schedule a hearing with notice of the hearing to be
14 provided by certified mail to the person stating the date,
15 time, place, and scope of the hearing. The scope of the
16 hearing shall ~~pertain to~~ determine all of the following
17 ~~issues~~:

18 "~~(1)~~ a. Whether a law enforcement officer had
19 reasonable grounds to believe the person had been driving a
20 motor vehicle on the public highways of this state while under
21 the influence of ~~the substances enumerated in subsection (a)~~
22 alcohol or any impairing substance.

23 "~~(2)~~ b. Whether the person was at fault in causing
24 the ~~accident~~ crash.

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

1 "~~(4)~~ (2) Whether the person was informed that his or
2 her privilege to drive would be suspended or denied if he or
3 she refused to submit to the test shall not be an issue.

4 "(f) If the suspension or determination that there
5 should be a denial or 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 "~~(g) 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-194.

23 "(a) Upon the trial of any civil, criminal, or
24 quasi-criminal action or proceeding arising out of acts
25 alleged to have been committed by any person while driving or
26 in actual physical control of a vehicle while under the
27 influence ~~of alcohol or controlled substance~~, evidence of the

1 amount of alcohol ~~or,~~ controlled substance, or other impairing
2 substance in a person's blood at the alleged time, as
3 determined by a chemical analysis of the person's blood,
4 ~~urine,~~ breath, oral fluid, or other bodily substance, or any
5 combination thereof, shall be admissible. Where ~~such~~ a
6 chemical test ~~is~~ or tests are made, the following provisions
7 shall apply:

8 "(1) Chemical analyses of the person's blood, ~~urine,~~
9 breath, oral fluid, or other bodily substance to be considered
10 valid ~~under the provisions of this section~~ shall have been
11 performed according to methods approved by the Department of
12 Forensic Sciences and by an individual possessing a valid
13 permit issued by the Department of Forensic Sciences ~~for this~~
14 ~~purpose.~~ The court trying the case may take judicial notice of
15 the methods approved by the Department of Forensic Sciences.
16 The Department of Forensic Sciences ~~is authorized to~~ may
17 approve satisfactory techniques or methods, to ascertain the
18 qualifications and competence of individuals to conduct ~~such~~
19 the analyses, and to issue permits which shall be subject to
20 termination or revocation at the discretion of the Department
21 of Forensic Sciences. The Department of Forensic Sciences
22 shall approve permits required in this section only for
23 employees of state, county, municipal, and federal law
24 enforcement agencies, and for laboratory personnel employed by
25 the Department of Forensic Sciences.

26 "(2) When a person shall submit to a blood test at
27 the direction of a law enforcement officer ~~under the~~

1 ~~provisions of~~ pursuant to Section 32-5-192, only a physician
2 ~~or,~~ a registered nurse, a paramedic, a phlebotomist, ~~(or other~~
3 ~~qualified person),~~ may withdraw blood for the purpose of
4 determining the alcoholic content ~~therein~~ or the presence of
5 other impairing substances. This limitation shall not apply to
6 the taking of breath or oral fluid ~~urine specimens~~. ~~If the~~
7 ~~test given under Section 32-5-192 is a chemical test of urine,~~
8 ~~the person tested shall be given such privacy in the taking of~~
9 ~~the urine specimen as will insure the accuracy of the specimen~~
10 ~~and, at the same time, maintain the dignity of the individual~~
11 ~~involved.~~

12 "(3) The person tested may at his or her own expense
13 have a physician, ~~or a~~ qualified technician, registered nurse,
14 or other qualified person of his or her own choosing
15 administer a chemical test or tests in addition to any
16 administered at the discretion of a law enforcement officer.
17 The failure or inability to obtain an additional test by a
18 person shall not preclude the admission of evidence relating
19 to the test or tests taken at the direction of a law
20 enforcement officer.

21 "(4) Upon the written request of the person who
22 shall submit to a chemical test or tests at the request of a
23 law enforcement officer, full information concerning the test
24 or tests shall be made available to him or her or his or her
25 attorney.

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

4 "(b) Upon the trial of any civil, criminal, or
5 quasi-criminal action or proceeding arising out of acts
6 alleged to have been committed by any person while driving or
7 in actual physical control of a vehicle while under the
8 influence of alcohol, the amount of alcohol in the person's
9 blood at the time alleged as shown by chemical analysis of the
10 person's blood, ~~urine, or~~ breath, ~~or other bodily substance~~
11 shall give rise to all of the following presumptions:

12 "(1) If there were at that time 0.05 percent or less
13 by weight of alcohol in the person's blood, it shall be
14 presumed that the person was not under the influence of
15 alcohol unless the person was operating a motor vehicle in
16 performance of his or her duties as a school bus driver or day
17 care driver at that time or was under the age of 21 years at
18 that time.

19 "(2) If there were at the time in excess of 0.05
20 percent but less than 0.08 percent by weight of alcohol in the
21 person's blood, ~~such~~ this fact shall not give rise to any
22 presumption that the person was or was not under the influence
23 of alcohol, but ~~such~~ this fact may be considered with other
24 competent evidence in determining whether the person was under
25 the influence of alcohol unless the person was operating a
26 motor vehicle in performance of his or her duties as a school

1 bus driver or day care driver at that time or was under the
2 age of 21 years at that time.

3 "(3) If there were at that time 0.08 percent or more
4 by weight of alcohol in the person's blood, or greater than
5 .02 percent if the person was operating a motor vehicle in
6 performance of his or her duties as a school bus driver or day
7 care driver at that time or was under the age of 21 years at
8 that time, it shall be presumed that the person was under the
9 influence of alcohol.

10 "(4) ~~The foregoing provisions of this subsection~~
11 Nothing in this section shall ~~not~~ be construed as limiting the
12 introduction of any other competent evidence ~~bearing upon~~
13 relating to the question of whether the person was under the
14 influence of alcohol.

15 "(c) If a person under arrest refuses to submit to a
16 chemical test ~~under the provisions of~~ or tests pursuant to
17 Section 32-5-192, evidence of refusal shall be admissible in
18 any civil, criminal, or quasi-criminal action or proceeding
19 arising out of acts alleged to have been committed while the
20 person was driving or in actual physical control of a motor
21 vehicle while under the influence ~~of alcohol or controlled~~
22 ~~substance~~.

23 "(d) No physician, registered nurse, ~~or~~
24 phlebotomist, paramedic, duly licensed chemical laboratory
25 technologist or clinical laboratory technician, fire
26 department, rescue squad, private ambulance company, or
27 medical facility shall incur any civil or criminal liability

1 as a result of the proper administering of a blood test when
2 requested in writing by a law enforcement officer to
3 administer such a test.

4 "§32-5A-300.

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

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

15 "(c) The ~~director~~ secretary, or his or her agent,
16 shall make a determination pursuant to subsections (a) and (b)
17 based on the report of a law enforcement officer required in
18 Section 32-5A-301, and this determination shall be final
19 unless an administrative review is requested under Section
20 32-5A-306 or a hearing is held under Section 32-5A-307.

21 "(d) The determination of these facts by the
22 ~~director~~ secretary, or his or her agent, is independent of the
23 determination of the same or similar facts in the adjudication
24 of any criminal charges arising out of the same occurrence.
25 ~~The disposition of these criminal charges shall not affect any~~
26 ~~suspension under this section.~~

27 "§32-5A-301.

1 "(a) A law enforcement officer who arrests any
2 person for a violation of Section 32-5A-191 shall within five
3 days after the day of arrest, excluding weekends and state
4 holidays, hand deliver, mail, or submit electronically to the
5 ~~department~~ agency a sworn report of all information relevant
6 to the enforcement action, including information which
7 adequately identifies the arrested person, a statement of the
8 officer's grounds for belief that the person violated Section
9 32-5A-191, the results of any chemical test which was
10 conducted, a statement if the person refused to submit to a
11 test, and a copy of the citation or complaint filed with the
12 court.

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

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

20 "§32-5A-302.

21 "(a) Upon receipt of the report of the law
22 enforcement officer, the ~~director~~ secretary, or his or her
23 agent, shall make the determination described in Section
24 32-5A-300. If the ~~director~~ secretary, or his or her agent,
25 determines that the person is subject to driving privilege
26 suspension, the ~~director~~ secretary, or the agent, shall issue
27 a notice of the suspension.

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

5 "(c) The notice of suspension shall clearly specify
6 the reason and statutory grounds for suspension, the effective
7 date of the suspension, the right of the person to request an
8 administrative review and a hearing, the procedure for
9 requesting an administrative review and a hearing, and the
10 date by which a request for an administrative review is
11 required to be made in order to receive a determination prior
12 to the effective date of the suspension.

13 "(d) If the ~~director~~ secretary, or his or her agent,
14 determines that the person is not subject to driving privilege
15 suspension, the ~~director~~ secretary, or his or her agent, shall
16 notify the person of the determination.

17 "§32-5A-303.

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

24 "(b) When serving a notice of intended suspension,
25 the law enforcement officer shall take possession of any
26 driver's license issued by this state which is held by the
27 person. When taking possession of a valid driver's license

1 issued by this state, the officer, acting on behalf of the
2 ~~director~~ secretary, shall issue a temporary driving permit
3 which is valid for 30 days after the date of issuance.

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

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

12 "§32-5A-304.

13 "(a) A driving privilege suspension shall become
14 effective 45 days after the person has received a notice of
15 intended suspension as provided in Section 32-5A-303, or is
16 deemed to have received a notice of suspension by mail as
17 provided in Section 32-5A-302 if no notice of intended
18 suspension was served.

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

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

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

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

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

7 "(5) For purposes of this section, "alcohol or
8 drug-related enforcement contacts" shall include all
9 suspensions under this article, any suspension or revocation
10 entered in this or any other state for a refusal to submit to
11 chemical testing under an implied consent law, and any
12 conviction in this or any other state for a violation which
13 involves driving a motor vehicle while having an unlawful
14 percent of alcohol in the blood, or while under the influence
15 of alcohol or drugs, or alcohol and drugs except that no more
16 than one alcohol or drug-related contact on any one DUI arrest
17 may be considered by the agency in determining the period of
18 suspension.

19 "(c) If a license is suspended under this section
20 for having ~~.08~~ 0.08 or more by weight of alcohol in the blood
21 of the person and the person is also convicted on criminal
22 charges arising out of the same occurrence for a violation of
23 Section 32-5A-191, the suspension under this section shall be
24 imposed, giving credit for suspension time served toward the
25 duration of suspension or revocation required under Section
26 32-5A-191. If a license is suspended under this section for
27 having .08 or more by weight of alcohol in the blood of the

1 person and the criminal charge against the person for
2 violation of Section 32-5A-191 is dismissed, nolle prossed, or
3 the person is acquitted of the charge, the ~~director~~ secretary
4 shall rescind the suspension order and remove the
5 administrative suspension from the person's driving record,
6 except for those persons holding a commercial ~~driver~~ driver's
7 license, a commercial ~~learner~~ learner's license, or a person
8 operating a commercial motor vehicle.

9 "§32-5A-306.

10 "(a) Any person who has received a notice of
11 suspension or a notice of intended suspension under this
12 article may request an administrative review. The request may
13 be accompanied by a sworn statement or statements and any
14 other relevant evidence which the person wants the ~~director~~
15 secretary, or his or her agent, to consider in reviewing the
16 determination made pursuant to Sections 32-5A-300 and
17 32-5A-302.

18 "(b) When a request for an administrative review is
19 made, the ~~director~~ secretary, or his or her agent, shall
20 review the determination made pursuant to Sections 32-5A-300
21 and 32-5A-302. In the review, the ~~director~~ secretary, or his
22 or her agent, shall give consideration to any relevant sworn
23 statement or other evidence accompanying the request for the
24 review, and to the sworn statement of the law enforcement
25 officer required by Section 32-5A-301. If the ~~director~~
26 secretary, or his or her agent, determines, by a preponderance
27 of the evidence, that the person drove or was in actual

1 physical control of a motor vehicle with 0.08 percent or more
2 by weight of alcohol in the blood, or the person refused the
3 test, the ~~director~~ secretary, or his or her agent, shall
4 sustain the order of suspension or suspend the ~~driver~~ driver's
5 license or driving privilege of the person if no order of
6 suspension has been issued. If the evidence does not support
7 such a determination, the ~~director~~ secretary, or his or her
8 agent, shall rescind the order of suspension or take no
9 suspension action if an order of suspension has not been
10 issued. The determination by the ~~director~~ secretary, or his or
11 her agent, upon administrative review is final unless a
12 hearing is requested under Section 32-5A-307.

13 "(c) The ~~director~~ secretary, or his or her agent,
14 shall make a determination upon administrative review prior to
15 the effective date of the suspension order if the request for
16 review is received by the ~~department~~ agency within 10 days
17 following service of the notice of intended suspension. Where
18 the request for administrative review is received by the
19 ~~department~~ agency more than 10 days following service of the
20 notice of intended suspension, the ~~director~~ secretary, or his
21 or her agent, shall make the determination within 30 days
22 following the receipt of the request for review.

23 "(d) A request for administrative review shall not
24 stay the driving privilege suspension or revocation. If the
25 ~~director~~ secretary, or his or her agent, is unable to make a
26 determination within the time limits specified in subsection

1 (c), the ~~director~~ secretary or agent shall stay the suspension
2 pending the determination.

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

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

14 "§32-5A-307.

15 "(a) Any person who has received a notice of
16 intended suspension pursuant to Section 32-5A-303 or a notice
17 of suspension pursuant to Section 32-5A-302 where no notice of
18 intended suspension was served may request an administrative
19 hearing. A request for an administrative hearing shall be in
20 writing and shall be hand delivered or mailed to the Alabama
21 ~~Department of Public Safety~~ State Law Enforcement Agency,
22 Driver License Division, in Montgomery, Alabama. The request
23 shall be received by the ~~department~~ agency or be mailed and
24 postmarked within 10 days of the notice of intended suspension
25 issued pursuant to Section 32-5A-303 or the notice of
26 suspension issued pursuant to Section 32-5A-302 where no
27 notice of intended suspension was served. Failure to request

1 an administrative hearing within 10 days shall constitute a
2 waiver of the person's right to an administrative hearing and
3 judicial review under this article. If the driver's license of
4 the person has not been previously surrendered, it shall be
5 surrendered at the hearing. A request for a hearing shall not
6 stay the driving privilege suspension.

7 "(b) The hearing shall be scheduled to be held as
8 quickly as practicable and not more than 30 days after the
9 filing of the request for a hearing. The hearing shall be held
10 at a location designated by the ~~director~~ secretary unless the
11 parties agree to a different location. The ~~department~~ agency
12 shall provide a written notice of the time and place of the
13 hearing to the party requesting the hearing at least five days
14 prior to the scheduled hearing, unless the parties agree to
15 waive this requirement.

16 "(c) The hearing shall be before the ~~Director of~~
17 ~~Public Safety~~ secretary or his or her duly authorized agent.
18 Upon the hearing, the ~~Director of Public Safety~~ secretary, or
19 his or her duly authorized agent, l may administer oaths and may
20 issue subpoenas for the attendance of witnesses and the
21 production of relevant books and papers and may require a
22 re-examination of the licensee. Upon the hearing, the ~~Director~~
23 ~~of Public Safety~~ secretary, or his or her duly authorized
24 agent, l shall make a final determination which either rescinds
25 the order of suspension or, for good cause appearing,
26 continues, modifies, or extends the suspension of the
27 licensee. If the hearing is conducted by a duly authorized

1 agent instead of by the ~~Director of Public Safety~~ personally
2 secretary, the determination of the ~~department~~ agency shall
3 not be final until approved by the ~~Director of Public Safety~~
4 secretary.

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

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

14 "(f) If the person who requested the hearing fails
15 to appear without just cause, the right to a hearing shall be
16 waived.

17 "(g) The procedures set forth in this article shall
18 be the sole and exclusive manner to determine the
19 administration of this article. The Alabama Administrative
20 Procedure Act in Sections 41-22-1 to 41-22-27, inclusive,
21 shall not apply.

22 "§32-5A-308.

23 "Within 30 days of the issuance of the final
24 determination of the ~~department~~ agency following a hearing
25 under Section 32-5A-307, a person aggrieved by the
26 determination shall have the right to file a petition in the
27 circuit court of the county where the arrest was made for

1 judicial review. The appeal shall be taken by serving written
2 notice of the appeal upon the ~~director~~ secretary, which
3 service shall be made by delivering a copy of the notice to
4 the ~~director~~ secretary in Montgomery, Alabama, and filing the
5 original ~~thereof~~ with the clerk of the court to which the
6 appeal is taken. The court shall set the matter for hearing
7 upon 30 days' written notice to the ~~director~~ secretary. At the
8 hearing, the court may take testimony and examine the facts of
9 the case. After the hearing, the court may either reverse or
10 sustain the final determination of the ~~department~~ agency. The
11 filing of a petition for judicial review shall not stay the
12 suspension order.

13 "§32-6-49.13.

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

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

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

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

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

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

26 "(e) Upon receipt of the sworn report of a law
27 enforcement officer submitted under subsection (d), the

1 ~~department~~ agency shall disqualify the driver from driving a
2 commercial motor vehicle for a period of not less than two
3 years under Section 32-6-49.12. This penalty shall be in
4 addition to and cumulative of any other penalties imposed upon
5 the driver under any other existing laws and shall run
6 consecutively with any penalties for other offenses.

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

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

24 "(2) Whether the person refused to submit to the
25 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 Section 3. Notwithstanding any other provision of
23 law and for purposes of prosecutions under Section 32-5A-191,
24 a law enforcement witness may give testimony solely on the
25 issue of impairment, and not on the issue of specific alcohol
26 or drug concentration levels, based on the results of a
27 horizontal gaze nystagmus test when the test is administered

1 in accordance with the individual's training and administered
2 by an individual who has successfully completed training in
3 the horizontal gaze nystagmus test.

4 Section 4. Although this bill would have as its
5 purpose or effect the requirement of a new or increased
6 expenditure of local funds, the bill is excluded from further
7 requirements and application under Amendment 621, now
8 appearing as Section 111.05 of the Official Recompilation of
9 the Constitution of Alabama of 1901, as amended, because the
10 bill defines a new crime or amends the definition of an
11 existing crime.

12 Section 5. This act shall become effective on the
13 first day of the third month following its passage and
14 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 23-FEB-21

Read for the second time and placed on the calen-
dar..... 03-MAR-21

Read for the third time and passed as amended 11-MAR-21

Yeas 29
Nays 0

Patrick Harris,
Secretary.