

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

1 SB258

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4 ENROLLED, An Act,

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

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

5 "§32-5-192.

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

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

23 "(3) The law enforcement agency ~~by which such~~ that
24 employs the officer ~~is employed~~ shall designate which ~~of the~~
25 ~~aforsaid tests~~ test or tests shall be administered. ~~Such~~ The

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

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

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

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

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

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

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

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

22 "b. Whether the person was placed under arrest, ~~and~~
23 ~~whether.~~

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

1 "(2) Whether the person was informed that ~~his or her~~
2 the 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 "(3) The ~~Director of Public Safety~~ secretary shall
5 order that the suspension or determination that there should
6 be a denial of issuance either be rescinded or sustained.

7 "(e) If the suspension or determination that there
8 should be a denial of issuance is sustained by the ~~Director of~~
9 ~~Public Safety~~ secretary, or his or her authorized agent upon
10 ~~such~~ the hearing, the person whose ~~license or permit to drive~~
11 ~~or nonresident operating privilege has been suspended or to~~
12 ~~whom a license or permit is denied, under the provisions of~~
13 ~~this section,~~ driving privilege has been suspended shall have
14 the right to file a petition in the appropriate court to
15 review the final order of suspension or denial by the ~~director~~
16 secretary, or his or her duly authorized agent, in the same
17 manner ~~and under the same conditions as is provided in Section~~
18 ~~32-6-16 in the cases of suspensions and denials~~ 32-5A-307.

19 "(f) ~~When it has been finally determined under the~~
20 ~~procedures of this section~~ Upon a determination that a
21 nonresident's privilege to operate a motor vehicle in this
22 state has been suspended, the ~~director~~ secretary shall ~~give~~
23 ~~information provide,~~ in writing ~~of,~~ the action taken by this
24 state to the motor vehicle administrator of the state of the

1 person's residence and ~~of~~ to any state in which he or she has
2 a license.

3 "§32-5-200.

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

21 "(b) For purposes of this section, the term "serious
22 physical injury" means physical injury ~~which~~ that creates a
23 substantial risk of death, or which causes serious and
24 protracted disfigurement, protracted impairment of health, or

1 protracted loss or impairment of the function of any bodily
2 organ.

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

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

13 "(e) (1) Upon suspending the license or permit to
14 drive or the privilege of driving a motor vehicle on the
15 highways of this state that is given to a nonresident or any
16 person, or upon determining that the issuance of a license or
17 permit shall be denied to the person, the ~~Director of Public~~
18 ~~Safety~~ secretary, or his or her authorized agent, shall within
19 three days of suspension notify the person in writing. Upon a
20 request filed by the person within five days from the date of
21 the notice of suspension or denial, the ~~director~~ secretary
22 shall schedule a hearing with notice of the hearing to be
23 provided by certified mail to the person stating the date,
24 time, place, and scope of the hearing. The scope of the

1 hearing shall ~~pertain to~~ determine all of the following ~~issues~~:

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

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

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

11 "~~(4)~~ (2) Whether the person was informed that his or
12 her privilege to drive would be suspended or denied if he or
13 she refused to submit to the test shall not be an issue.

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

24 "(g) ~~When it has been finally determined under the~~
25 ~~procedures of this section~~ Upon a determination that ~~the~~

1 ~~privilege of a nonresident~~ a nonresident's privilege to
2 operate a motor vehicle in this state has been suspended, the
3 ~~director~~ secretary shall ~~give information~~ provide, in writing
4 ~~of,~~ the action taken to the motor vehicle administrator of the
5 state of ~~the residence of the person~~ person's residence and to
6 any state in which the person has a license.

7 "§32-5A-194.

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

20 "(1) Chemical analyses of the person's blood, ~~urine,~~
21 breath, oral fluid, or other bodily substance to be considered
22 valid ~~under the provisions of this section~~ shall have been
23 performed according to methods approved by the Department of
24 Forensic Sciences and by an individual possessing a valid
25 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, a phlebotomist, (or other
17 qualified person), may withdraw blood for the purpose of
18 determining the alcoholic content ~~therein~~ or the presence of
19 other impairing substances. This limitation shall not apply to
20 the taking of breath or oral fluid ~~urine specimens~~. If the
21 ~~test given under Section 32-5-192 is a chemical test of urine,~~
22 ~~the person tested shall be given such privacy in the taking of~~
23 ~~the urine specimen as will insure the accuracy of the specimen~~
24 ~~and, at the same time, maintain the dignity of the individual~~
25 ~~involved~~.

1 "(3) The person tested may at his or her own expense
2 have a physician, ~~or a~~ qualified technician, registered nurse,
3 or other qualified person of his or her own choosing
4 administer a chemical test or tests in addition to any
5 administered at the discretion of a law enforcement officer.
6 The failure or inability to obtain an additional test by a
7 person shall not preclude the admission of evidence relating
8 to the test or tests taken at the direction of a law
9 enforcement officer.

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

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

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

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

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

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

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

6 "(c) If a person under arrest refuses to submit to a
7 chemical test ~~under the provisions of~~ or tests pursuant to
8 Section 32-5-192, evidence of refusal shall be admissible in
9 any civil, criminal, or quasi-criminal action or proceeding
10 arising out of acts alleged to have been committed while the
11 person was driving or in actual physical control of a motor
12 vehicle while under the influence ~~of alcohol or controlled~~
13 ~~substance~~.

14 "(d) No physician, registered nurse, ~~or~~
15 phlebotomist, paramedic, duly licensed chemical laboratory
16 technologist or clinical laboratory technician, fire
17 department, rescue squad, private ambulance company, or
18 medical facility shall incur any civil or criminal liability
19 as a result of the proper administering of a blood test when
20 requested in writing by a law enforcement officer to
21 administer such a test.

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

1 control of a motor vehicle while the amount of alcohol in the
2 blood of the person was above the legal limit.

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

8 "(c) The ~~director~~ secretary, or his or her agent,
9 shall make a determination pursuant to subsections (a) and (b)
10 based on the report of a law enforcement officer required in
11 Section 32-5A-301, and this determination shall be final
12 unless an administrative review is requested under Section
13 32-5A-306 or a hearing is held under Section 32-5A-307.

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

20 "§32-5A-301.

21 "(a) A law enforcement officer who arrests any
22 person for a violation of Section 32-5A-191 shall within five
23 days after the day of arrest, excluding weekends and state
24 holidays, hand deliver, mail, or submit electronically to the
25 ~~department~~ agency a sworn report of all information relevant

1 to the enforcement action, including information which
2 adequately identifies the arrested person, a statement of the
3 officer's grounds for belief that the person violated Section
4 32-5A-191, the results of any chemical test which was
5 conducted, a statement if the person refused to submit to a
6 test, and a copy of the citation or complaint filed with the
7 court.

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

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

15 "§32-5A-302.

16 "(a) Upon receipt of the report of the law
17 enforcement officer, the ~~director~~ secretary, or his or her
18 agent, shall make the determination described in Section
19 32-5A-300. If the ~~director~~ secretary, or his or her agent,
20 determines that the person is subject to driving privilege
21 suspension, the ~~director~~ secretary, or the agent, shall issue
22 a notice of the suspension.

23 "(b) The notice of suspension shall be mailed to the
24 person at the last known address shown on the ~~department's~~

1 agency's record. The notice is deemed received three days
2 after mailing.

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

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

15 "§32-5A-303.

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

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

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

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

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

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

22 "(c) If a license is suspended under this section
23 for having ~~-.08~~ 0.08 or more by weight of alcohol in the blood
24 of the person and the person is also convicted on criminal
25 charges arising out of the same occurrence for a violation of

1 Section 32-5A-191, the suspension under this section shall be
2 imposed, giving credit for suspension time served toward the
3 duration of suspension or revocation required under Section
4 32-5A-191. If a license is suspended under this section for
5 having .08 or more by weight of alcohol in the blood of the
6 person and the criminal charge against the person for
7 violation of Section 32-5A-191 is dismissed, nolle prossed, or
8 the person is acquitted of the charge, the ~~director~~ secretary
9 shall rescind the suspension order and remove the
10 administrative suspension from the person's driving record,
11 except for those persons holding a commercial ~~driver~~ driver's
12 license, a commercial ~~learner~~ learner's license, or a person
13 operating a commercial motor vehicle.

14 "§32-5A-306.

15 "(a) Any person who has received a notice of
16 suspension or a notice of intended suspension under this
17 article may request an administrative review. The request may
18 be accompanied by a sworn statement or statements and any
19 other relevant evidence which the person wants the ~~director~~
20 secretary, or his or her agent, to consider in reviewing the
21 determination made pursuant to Sections 32-5A-300 and
22 32-5A-302.

23 "(b) When a request for an administrative review is
24 made, the ~~director~~ secretary, or his or her agent, shall
25 review the determination made pursuant to Sections 32-5A-300

1 and 32-5A-302. In the review, the ~~director~~ secretary, or his
2 or her agent, shall give consideration to any relevant sworn
3 statement or other evidence accompanying the request for the
4 review, and to the sworn statement of the law enforcement
5 officer required by Section 32-5A-301. If the ~~director~~
6 secretary, or his or her agent, determines, by a preponderance
7 of the evidence, that the person drove or was in actual
8 physical control of a motor vehicle with 0.08 percent or more
9 by weight of alcohol in the blood, or the person refused the
10 test, the ~~director~~ secretary, or his or her agent, shall
11 sustain the order of suspension or suspend the ~~driver~~ driver's
12 license or driving privilege of the person if no order of
13 suspension has been issued. If the evidence does not support
14 such a determination, the ~~director~~ secretary, or his or her
15 agent, shall rescind the order of suspension or take no
16 suspension action if an order of suspension has not been
17 issued. The determination by the ~~director~~ secretary, or his or
18 her agent, upon administrative review is final unless a
19 hearing is requested under Section 32-5A-307.

20 "(c) The ~~director~~ secretary, or his or her agent,
21 shall make a determination upon administrative review prior to
22 the effective date of the suspension order if the request for
23 review is received by the ~~department~~ agency within 10 days
24 following service of the notice of intended suspension. Where
25 the request for administrative review is received by the

1 ~~department~~ agency more than 10 days following service of the
2 notice of intended suspension, the ~~director~~ secretary, or his
3 or her agent, shall make the determination within 30 days
4 following the receipt of the request for review.

5 "(d) A request for administrative review shall not
6 stay the driving privilege suspension or revocation. If the
7 ~~director~~ secretary, or his or her agent, is unable to make a
8 determination within the time limits specified in subsection
9 (c), the ~~director~~ secretary or agent shall stay the suspension
10 pending the determination.

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

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

22 "§32-5A-307.

23 "(a) Any person who has received a notice of
24 intended suspension pursuant to Section 32-5A-303 or a notice
25 of suspension pursuant to Section 32-5A-302 where no notice of

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

17 "(b) The hearing shall be scheduled to be held as
18 quickly as practicable and not more than 30 days after the
19 filing of the request for a hearing. The hearing shall be held
20 at a location designated by the ~~director~~ secretary unless the
21 parties agree to a different location. The ~~department~~ agency
22 shall provide a written notice of the time and place of the
23 hearing to the party requesting the hearing at least five days
24 prior to the scheduled hearing, unless the parties agree to
25 waive this requirement.

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

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

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

1 "(f) If the person who requested the hearing fails
2 to appear without just cause, the right to a hearing shall be
3 waived.

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

9 "§32-5A-308.

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

1 filing of a petition for judicial review shall not stay the
2 suspension order.

3 "§32-6-49.13.

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

11 "(b) (1) A test or tests shall be administered at the
12 direction of a law enforcement officer, who after stopping or
13 detaining the commercial motor vehicle driver, has probable
14 cause to believe that the driver was driving a commercial
15 motor vehicle while having ~~alcohol or drugs~~ any impairing
16 substance in his or her system. The law enforcement officer
17 shall test the driver at the scene by using a field
18 breathalyzer or other approved device, technique, or procedure
19 approved by the Department of Forensic Sciences, or transport
20 the driver to an appropriate facility where a chemical test or
21 tests by an approved method shall be administered either by
22 the officer or at his or her direction, or both.

23 "(2) A test or tests shall be administered at the
24 direction of a law enforcement officer to all commercial motor
25 vehicle drivers who are involved in any vehicular ~~accident~~

1 crash which results in death or physical injury requiring
2 hospitalization or emergency medical treatment.

3 "(c) A person requested to submit to a test or tests
4 as provided in subsection (a) ~~above~~ must be warned by the law
5 enforcement officer requesting the test or tests, that a
6 refusal to submit to the test or tests will result in that
7 person being immediately placed out of service for a period of
8 24 hours and being disqualified from operating a commercial
9 motor vehicle for a period of not less than two years under
10 Section 32-6-49.12.

11 "(d) If the person refuses testing, or submits to a
12 test which discloses an alcohol concentration of 0.04 or more,
13 the law enforcement officer shall submit a sworn report to the
14 ~~department~~ agency certifying that the test was requested
15 pursuant to subsection (b) and that the person refused to
16 submit to testing, or submitted to a test which disclosed an
17 alcohol concentration of 0.04 or more.

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

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

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

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

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

23 "(g) If the suspension or determination that there
24 should be a denial of issuance is sustained by the ~~director~~
25 secretary, or his or her authorized agent, the person whose

1 license or permit to drive or a nonresident operating
2 privilege has been suspended, or to whom a license or permit
3 is denied, shall have the right to file a petition to review
4 the final order, suspension, or denial within 30 days after
5 the entry of the final order of suspension or denial by the
6 ~~director~~ secretary in the appropriate court to review the
7 final order of suspension.

8 " (h) ~~When it has been finally determined under the~~
9 ~~procedures of this section~~ Upon a determination that ~~the~~
10 ~~privilege of a nonresident~~ a nonresident's privilege to
11 operate a motor vehicle in this state has been suspended, the
12 ~~director~~ secretary shall ~~give information~~ provide in writing
13 ~~of~~ the action taken to the motor vehicle administrator of the
14 state of ~~the residence of the person~~ person's residence and to
15 any state in which the person has a license."

16 Section 3. Notwithstanding any other provision of
17 law and for purposes of prosecutions under Section 32-5A-191,
18 a law enforcement witness may give testimony solely on the
19 issue of impairment, and not on the issue of specific alcohol
20 or drug concentration levels, based on the results of a
21 horizontal gaze nystagmus test when the test is administered
22 in accordance with the individual's training and administered
23 by an individual who has successfully completed training in
24 the horizontal gaze nystagmus test.

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

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB258

Senate 11-MAR-21

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Passed: 17-MAY-21

By: Senator Orr